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Bihar rent
Bill

Year: 1878

Sub: Law and
Legislation/Rent
Bill

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BELLAR INTEBILU

XIV
211

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A
BILL
TO

Amend the Law relating to the recovery of Rent in the Province of Behar.

ERREAS it is expedient to amend the provisions of the Rent Law in the Provin
e to the rights of ryots with respect to the delivery of pottahs and the occupa
prevention of illegal exaction and extortion in connection with demands of re
questions connected with the same; to provide a summary procedure for the tr
of cases; to extend the jurisdiction of Collectors; and to amend the law rela
; it is enacted as follows.

Chap. I.
Preliminary.

1.—This act may be called "The
Act 1879" and it shall take effect
vince of Behar from the date which
enant Governor of Bengal shall fix
published in the Calcutta Gazette.

2.—When and so soon as this ac
mence and take effect "The L
Tenant Procedure Act 1869" sh
have operation or effect in the Provi
save so far as it repeals or modifie
Regulations or Acts, and save so fa
suits or proceedings, which before
the commencement of this Act shal
instituted before any Court.

3.—In this Act, unless there b
repugnant in the subject or context.

(1) "Province of Behar" means
tricts of the Patna Division, and i
District or Districts in the Bhaugulp
to which the Lieutenant Governo
may, by notification in the Calcutta
pleased to extend this Act.

(2) "Rent" means whatever is
delivered or rendered by a tenant o
his holding, use or occupation of lan

(3) "Proprietor" means a person
persons being in possession of a
Revenue-free property as owner or ow

(4) "Co-sharer" means any perso
possession of an undivided share in a
revenue-free property, as owner the

(5) "Landholder" means the pers
a tenant is liable to pay rent.

definition is taken from sc: 3 cl: (2) of the North Western
Rent Act XVIII. of 1873.

definition for the most part corresponds to that given in
) of the Land Registration Act 1876, but the latter has been
s to exclude a sharer in a joint undivided Estate. *

definition, which is taken from the N. W. P. Act sc: 3 cl:
referable to the definition in Baboo Kristodas Pal's Bill,
d include an unrecorded Proprietor (Vide Sc: 78 of Land
n Act.)

(6) "Resident-ryot" means a cultivator whose homestead is situated in the same estate or village in which he holds land, and whose father or other relative, from whom he has inherited, resided and held land in the said same estate or village; provided that the aggregate period for which such ryot and his father, or such ryot and his other relative aforesaid, may have so resided and held land shall have been not less than twelve years.

(6) It is necessary to use both words "Estate" and "Village" in this definition because in some Districts Estates are much larger than villages, while in others owing to the effects of the Butwarra Law Estates are being daily sub-divided, and a village often contains twenty separate estates.

(7) "Non-resident ryot" means a cultivator who holds land in an estate or village other than that in which his homestead in situated.

(8) "Month" means a month of the Fuslee year.

(9) "Year" means the Fuslee year.

(10) "The Court" means the Civil Court having jurisdiction in any suit or matter.

4.—In the construction of this Act the word "Collector" shall include a Deputy Collector in charge of a Sub-division or other officer exercising the powers of a Collector of a District or of a Deputy Collector in charge of a Sub-division, by whatever designation such officer may be called.

4. Taken VERBATIM from sc: 1 of Act VIII. B. C. of 1869.

CHAP. II.

Rights and Liabilities of Landholders and Tenants.

5.—No dependent talookdar, or other person possessing a permanent transferable interest in land intermediate between the proprietor of an estate and the ryot, who holds his Talook or tenure (otherwise than under a terminable lease) at a fixed rent which has not been changed from the time of the Permanent Settlement, shall be liable to any enhancement of such rent, anything in section 51 Regulation VIII. of 1793, or in any other law, to the contrary notwithstanding.

5. Taken from sc: 16 of Act VIII. B. C. of 1869.

6.—Whenever, in any suit under this Act it shall be proved that the rent at which a talook or other tenure is held has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that such talook or tenure has been held at that rent from the time of the Permanent Settlement, unless the contrary be shewn, or it be proved that such rent was fixed at some later period.

6. Taken from sc: 17 of Act VIII. B. C. of 1869.

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The Chorkhar, I believe, is unknown in Bghar, but I have not ventured to change the term on my own responsibility – C.F.G.

8. There are conflicting rulings of the High Court regarding the necessity or otherwise of pleading specially that land has been held at an unchanged rate from the time of the Permanent Settlement. (vide cases of Rizq-un-Nissa 30th Nov. 1863, Ram Rohun Ghose 29th Jan. 1865, Jaga Rohun Das 5th July 1865, Rajah Ram Rohun Singh 12th August 1862 &c) – The determination of such an important legal question in each case ought, I think, to be left to the discretion or caprice of individual judges – L.S.W.

9. Clause 2 – If this clause and Sc: 3 (b) and Sc: 11 become law, Rajya Planters will no longer have any excuse for not dealing directly with ryots – their own books will in most cases be able to prove rights of occupancy for all resident ryots in villages which have been hitherto in lease to them – L.S.W.

7. Taken generally from sc: 3 of Act VIII. B. C. of 1869. The right "to receive pottahs at those rates" may be more appropriately declared under the heading of "Leases."

7.—Ryots who hold lands at fixed rates of rent, which shall have not been changed from the time of the Permanent Settlement, shall continue to hold at such rates. Such ryots shall be called "Ryots at Fixed rates." Their tenures are heritable and transferable.

8. The first clause of this section is taken from sc: 4 of Act VIII. B. C. of 1869. The second clause is new, and its enactment is rendered necessary by certain rulings of the High Court which are injurious to the interests of ignorant tenants.

8.—Whenever, in any suit under this Act, it shall be proved that the rent at which land is held by a ryot has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that the land has been held at that rent from the time of the Permanent Settlement, unless the contrary be shewn, or unless it be proved that such rent was fixed at some later period.

The presumption, which in this Section and Section 6 arises from payment of rent at one uniform rate for twenty years., is not rebutted by a tenant's omission to plead specially that he has held at the same rate from the time of the Permanent Settlement, nor by the production of a pottah dated subsequently to the Permanent Settlement unless the tenant expressly admits that the tenancy or rate commenced from the date of such pottah.

9. The provisions of this section are taken partly from sc: 6 of Act VIII. B.C. of 1869, partly from sc: 8 of the N. W. P. Act, and in other respects they are new. "ZERAAT" lands in North Behar are so widely different from the original "noej-joto" and other private lands "appropriated by zemindars to the subsistence of themselves and families "(vide sc: 39 of Regulation VIII. of 1793) and the extension of "zeraat" lands is a matter of such easy accomplishment in many estates, that it seems necessary to define them, for the purposes of this section, with some precision. It is inexpedient that land, which to-day is "ASSAMEEWAR," should tomorrow be recognised as "ZERAAT," over which a right of occupancy could never be required by any ryot. The definition of "zeraat" is taken mainly from the N. W. P. Act, the words "last partition of the estate" in clause (a) having been substituted for "the last settlement of the district." Clause (b) will prevent "RYOTTI" lands, which have been or may be converted into "ZERAAT" by temporary lease-holders, from being recognised as "SEER" lands over which the acquisition of a right of occupancy is prohibited by law.

The clause respecting resident-ryots is strongly approved by Sir S. Bayley and Mr. Secretary Mackenzie, and to show that my view of a resident-ryot's rights is by no means unreasonable I may quote the opinion of the late Legal Remembrancer Mr. H. Bell. In page 16 of his edition of the "Law of Landlord and Tenant" Mr. Bell observes as follows: "It is generally assumed that a ryot must have been in possession of his holding for 12 years to acquire a right of occupancy. This, I think, is a very doubtful proposition. There is no magic in the number twelve; and it is submitted that a "khood-kast" ryot who settles and builds his house upon the land, possesses from the commencement of his tenancy a right of occupancy in it. The law merely says that a ryot who has held land for 12 years shall have a right of occupancy in the land; but it does not say that a ryot who has not held for 12 years shall not have a right of occupancy."

9.—Every ryot who shall have cultivated or held land for a period of twelve years shall have a right of occupancy in the land so cultivated or held by him, whether it be held under pottah or not, so long as he pays the rent payable on account of the same; but this rule does not apply to "*seer*" or "*zeraat*" land belonging to the proprietor of the estate or tenure, and let by him on lease for a term, or year by year, nor (as respects the actual cultivator) to land sub-let for a term, or year by year, by a ryot having a right of occupancy—nor to lands held by a tenant in lieu of wages.

Every resident-ryot shall be presumed to have a right of occupancy in all land which he holds in that estate or village with reference to which he is a resident-ryot.

Explanation I.—The holding of the father or other person from whom a ryot inherits shall be deemed to be the holding of the ryot within the meaning of this section.

Explanation II.—A right of occupancy is heritable, and, so long as no decree is out-standing against the tenant for rent due on account of such tenure, it is also transferable with all liabilities.

Explanation III.—The presumption created by this section in favor of a resident-ryot may be rebutted in respect of any portion of his tenure by proof that such portion has been held for less than twelve years.

Explanation IV.—For the purposes of this section "*seer*" or "*zeraat*" land means.

(*a.*) land recorded as "*seer*" or "*zeraat*" at the last partition of the estate in which it is situate and continuously so recorded since.

(*b.*) land continuously cultivated for twelve years by the proprietor or co-sharer himself with his own stock or by his servants, or by hired labor

(*c*). land recognised by village-custom as the special holding of a co-sharer, and treated as such in the distribution of profits or charges among the co-sharers.

10.—Ryots having a right of occupancy shall be called "occupancy-ryots," and all ryots of inferior legal status shall be called "common-ryots."

10. The nomenclature in this section and section 6 is borrowed from the N. W. P. Act so far as regards the two higher classes of ryots. The term "common ryots" is suggested as preferable to "tenants-at-will," which latter expression is not suitable to ryots whom this Bill entitles to receive pottahs for five years. For brevity's sake some short distinguishing names are required.

11.—On the application of any ryot to have his class of tenure determined, the Court shall determine the Class to which he belongs--namely whether he is a ryot at fixed rates,
or an occupancy ryot, resident or non-resident,
or whether he is a common ryot.

11. This section, which is taken generally from the N. W. P. Act, is much needed. There are times when a ryot may be in a peculiarly favorable position for proving a right of occupancy, and of which he should be entitled to take advantage.

It is also desirable that every reasonable facility should be afforded to a ryot of getting his class of tenure determined once for all. Moreover, as a proprietor by sc: 38 of Act VIII. B. C. of 1869, and by sc: 44 of this Bill can cause the Collector "to ascertain, determine and record" tenures and undertenures, and rates of rent, it is only reasonable that ryots should enjoy a corresponding privilege.

12.—The rent paid by an occupancy-ryot shall not be liable to enhancement except.
(*a.*) by a written agreement registered under "the Indian Registration Act 1877;" or (*b.*) by order under this Act.

12. This section contains so much of sc: 12 of the N. W. P. Act as seems applicable to Behar.

13.—No occupancy-ryot shall be liable to an enhancement of the rent previously paid by him, except on some one of the following grounds, namely:—

That the rate of rent paid by such ryot is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the places adjacent.

That the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the ryot.

13. Taken from sc: 18 of Act VIII. B. C. of 1869.

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Explan: III. For my own part I am inclined to declare that every resident ryot shall be conclusively presumed to have a right of occupancy in all land held by him as, and to omit this Explanation. C.F.K.

N. In speaking of a "class of tenure being determined once for all" I must be understood to refer only to the two higher classes of ryots. If a ryot at the present time can prove that he is only an occupancy ryot, the Zemindar ought certainly 8 years hence or at any future period to be able to rebut the presumption created by Sec. 8. C.F.K.

13. With respect to enhancement-cases against occupancy-ryots in proclaimed tracts, the principle of fixing arbitrarily in each case some proportion of the average gross value of the produce, or some proportion of the average net profits, is sanctioned by s. 15 clauses (a) and (b) of the Agrarian Disputes Act (XV. of 1879). I propose to apply the same principle, stripped of much of its arbitrary character, to enhancement-cases against occupancy-ryots in quiet tracts.

In determining the average price s. 15 of the same Act requires that the mean price of the produce during the previous three years only be ascertained. Neither of these terms is sufficiently long in some parts of Behar where failures of rain (and consequently of harvests) have occurred in alternate seasons. I think that the period five years, beginning with 1873, a term of ten years should be fixed.

Whether a temporary suspension of the productive powers of land can be strictly regarded as a decrease of such powers I am unable to say. If this question must be answered in the negative, then some provision should be made for protecting an occupancy-ryot from enhancement on the ground of a mere increase in the value of produce. For it may so happen that while the value of produce has increased 25 per cent during a term of five years, the actual outturn has decreased 50 per cent in consequence of scanty rain-falls. [illegible]

That the quantity of land held by the ryot has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.

This proviso is new. Under the present law there is no criterion by which "fair and equitable rates" can be ascertained. Pergunnah rates, to which "Khood-kast" ryots were entitled to appeal under the early Regulations, have never been determined and recorded, and it seems necessary to propose something in their place. The provision in the N. W. P. Act (sc: 14) that the rent of an ex-proprietary tenant (a species of occupancy-ryot) shall be four annas in the rupee below the prevailing rate paid by tenants-at-will seems objectionable in principle, as it subjects the former, though in a slightly modified degree, to the competition and rack-renting endured by ryots of far inferior status. By limiting the landholder's demand to one-sixth of the value of the produce we shall give him a direct interest in making improvements, and shall at the same time partially revive the ancient principle, according to which one sixth of the produce was ordinarily taken by the sovereign. (Vide Mill's History of India Vol. I. Page 205 Wilson's Edition). Where occupancy-ryots are already paying more than such proportion as rent the Courts should be bound to recognise the rate, and such ryots should not be entitled to claim any abatement under this section. I would moreover prohibit the Courts from fixing or enhancing the rent of an occupancy-ryot above one sixth part of the value of the produce. In this District the Government (on the average) receives from the Zemindars only one-sixth part of what they collect as rent from ryots.

Provided however (1) that when the rent is paid in money the Court shall in no case *fix* a rate in excess of one-sixth part of the value of the estimated average produce of the land, and (2) that the value of the produce shall be deemed to be the average price realizable for each kind of produce at the date of the instalment next following the time at which such produce is ordinarily reaped.

14. This provision is analogous to the proviso in sc: 68 of Act VIII. B. C. of 1869. It seems desirable to restrict individual action on the part of a co-sharer in every legitimate way.

The second clause is new and is designed to remedy the evil pointed out by Mr. Molony, who in the 18th para: of his Note suggested that "it would be a desirable improvement in the law if the power of enhancement was altogether withdrawn from ticcadars and others holding only a temporary interest in the land." The suggestion is strongly approved by Sir S. Bayley (vide paras: 32 and 33 of his Note), but it seems to me that some modification of the proposal is required in the interests of zemindars. It is generally agreed that the present system of short leases in Behar ought to be re-placed by one of long leases, but such a change is not likely to be promoted by a provision which absolutely prohibits the enhancement of rents during the currency of a ticcadar's lease. It must not be forgotten that under ticcadars holding for 20 years or upwards without the power of enhancing rents ryots will become entitled to the presumption created by sc: 8. For my own part I should like to see zemindars prohibited from temporarily leasing their rights or anything except specific lands.

14.—No co-sharer shall be entitled to enhance the rent of any ryot otherwise than through a Manager authorised to collect the rents of the whole estate or revenue-property on behalf of all the co-sharers in the same.

No landholder not being a proprietor, nor possessing a permanent transferable interest in land, shall be entitled to enhance the rent of any ryot without the special sanction of the proprietor or his representative. Such sanction shall be accorded by a duly registered Power of Attorney, which may authorise the land holder to take such legal steps as he may think proper for enhancing the rents of particular ryots of one estate or village named therein within six months from the date of its execution. Provided that no agreement made at any time between a proprietor or his representative and such landholder, whereby the former may bind himself to authorise future enhancements of rent, whether conditionally or unconditionally, shall be enforceable in any Court, and that breach of the same shall not constitute cause for any action whatsoever.

15. This provision is approved by Mr. Dampier (vide para: 11 of his Note.) It is also partly supported by sections 16 (a) and 22 of the N. W. P. Act, and by sc: 9 of Act VIII. B. C. of 1869, which last allows the Court in case of disagreement between a landholder and tenant to grant a pottah for a term not exceeding ten years.

15.—The rent of an occupancy-ryot shall not be liable to be enhanced or abated at any time during the continuance of such ryot's lease, nor, when such ryot holds land without a written engagement, until the expiration of ten years

from the date on which his rent was last fixed or enhanced.

16.—Subject to the provisions of sc: 15 of this Act, every occupancy-ryot shall be entitled to claim an abatement of the rent previously paid by him, if the area of the land has been diminished by diluvion or otherwise, or if the value of the produce or the productive powers of the land have been decreased by any cause beyond the power of the ryot, or if the quantity of land held by the ryot has been proved by measurement to be less than the quantity for which rent has been previously paid by him.

16. This section corresponds generally to sc: 19 of Act VIII. B. C. of 1869.

17.—Applications for enhancement or abatement of rent must be made in or before the month of Jeyt next before the year commencing on the first day of the month of Assin from which the rent is to be enhanced or abated,

and all orders for enhancement or abatement shall take effect from the first day of the month of Assin next following the date of the application.

17. This section is taken MUTATIS MUTANDIS from sc: 19 of the N. W. P. Act.

18.—In determining, under this Chapter, the rate of rent payable by any ryot, his caste shall not be taken into consideration, unless it is proved that, by local custom, caste is taken into account in determining such rate;

and whenever it is found that, by local custom or practice, any class of persons, by reason of their having formerly been proprietors of the soil, or of their being resident-ryots or otherwise, hold land at favorable rates of rent, the rate shall be determined in accordance with such custom or practice.

18. This section is taken for the most part from sc: 20 of the N. W. P. Act.

19.—No common ryot who holds land under a written engagement for a specified term shall be liable to an enhancement of rent during the continuance of such engagement; and no common ryot who has held land without a written engagement for more than twelve months otherwise than under the circumstances described in section 27, or under a written engagement not specifying the period of such engagement, or whose engagement has expired or has become cancelled in consequence of the sale for arrears of rent or revenue of the tenure or estate in which the land held by him is situate, shall be liable to pay any higher rent or rate for such land than the rent or rate payable for the previous year, unless a written notice shall have been served on such ryot in or before the month of Jeyt specifying the rent to which he will be

19. This section is partly taken from sc: 14 of Act VIII. B. C. of 1869, but the last clause of it is new and should be read with section 27 under the head of "Leases."

Since drafting this Note I found that my proposal (suggested by my own experience) to adopt s. 20 from the N.W.P. Act is also justified by the experience of Mr. A. Hobhouse, late Legal Remembrancer, who thus writes in a note to his Law of Landlord and Tenant, Page 42 – "In the North-western Provinces the expression "the same class" has been held to apply to the caste of the ryot. It seems that in some places high-caste ryots pay a lower rent than low-caste ryots: a similar custom prevails, I believe in some parts of Behar" – These high-caste ryots, from their position and independence, are the most successful opponents of the Indigo Plantation system – C.F.H.

19 - Clause 2 - The object of this clause and section 27 is to induce a landholder, who has once given a pattah, to grant successive pattahs without delay, or to take speedy measures for enhancing rent or ejecting the ryot - Ctte.

subject for the ensuing year, and the ground on which an enhancement of rent is claimed.

In the case of a common ryot who has previously held land under a written engagement for a specified term, and whose engagement has expired by effluxion of time, the notice for enhancement of rent shall be served at any time within the six months next following the date of expiration of the said engagement, and the enhanced rent, if agreed to by the ryot or sanctioned by the Court, shall be deemed to have become payable on account of the instalment next following the date of the service of such notice.

20. This section corresponds generally to the latter half of sc: 14 of Act VIII. B. C. of 1869.

20.—Such notice shall be served by order of the Collector in whose jurisdiction the lands are situate, on the application (which may be on plain paper) of the proprietor or other empowered person, and shall, if practicable, be served personally upon the ryot. If for any reason the notice cannot be served personally upon the ryot, it shall be affixed at his usual place of residence; or, if he have no such place of residence in the District in which the land is situate, the mode of service of such notice shall be by affixing it at the Mâl Catcherry of such land or other conspicuous place thereon, or at the village Chowree or Chowpal, or at some other conspicuous place in the village in which the land is situate.

21. This section is taken from sc: 15 of Act VIII. B. C. of 1869.

21.—Any ryot, on whom such notice as aforesaid has been served, may contest his liability to pay the enhanced rent demanded of him, either by complaint of excessive demand of rent, or in answer to any suit preferred against him for recovery of arrears of the enhanced rent.

This EXPLANATION embodies some remarks made by Sir B. Peacock C. J. in case Bakramath Mundle I. B. L. R. (F. B.) 25. Though I rather dislike leaving it to the Civil Courts to act on their own discretion in such a matter, I do not see what other course can be adopted, unless the provisions applicable to occupancy ryots in respect of enhancement are extended to common ryots with some such modifications as these, namely.

(1) when rent is paid in kind, the Court shall in no case FIX a proportion in excess of one half of the produce.

(2) when rent is paid in money, the Court shall in no case FIX the amount in excess of one fourth of the value of the estimated average produce.

"Fix" is used here in the same sense as in sc: 13.

Explanation.—As the rent even of a common ryot cannot be enhanced by the Court unless the grounds of enhancement are duly stated; it will be for the Court to determine, in case of dispute, whether those grounds exist, and whether they are such as to justify the enhancement.

(A) LEASES.

22.—Every ryot is entitled to receive from the landholder, a pottah or lease containing the following particulars.

(a.) the quantity and boundaries of the land; and where fields have been numbered in a Government Survey, the number of each field.

(b.) the length of the "lagee" or measuring rod with reference to which the quantity of the land has been computed.

(c.) the amount of annual rent payable for such land.

(d.) the instalments in which, and the dates on which, such rent is to be paid.

(e.) any special conditions of the lease, not inconsistent with the clauses of this section.

(f.) if the rent is payable in kind, or is calculated on a valuation of the produce, the proportion of produce to be delivered, the mode of valuation, and the time, manner and place of delivery.

22. This section is taken mostly from sc: 2 of Act VIII. B. C. of 1859, and sc: 24 of the N. W. P. Act.

(b.) This clause is new. By sc: 3 of Regulation II. 1795 (for the Province of Benares) "the denomination and length of the rod" were required to be inserted in pottahs, and the provision was an excellent one. I may also mention that in half of the villages, in which land has recently been taken up in Mozufferpore District for the Tirhoot State Railway, it has been found that the proprietors have reduced the 6½ cubits' rod, used in the original settlement proceedings and in their own Butwara cases, to one of 6¼ cubits only for measuring ryotti lands.

23.—No lease shall contain any stipulation barring the acquisition of a right of occupancy, nor shall the acceptance of any lease prejudice any right, or create a presumption against the existence of any right, which a ryot may claim irrespectively of such lease.

23. This section cancels sc: 7 of Act VIII. B. C. of 1859. The latter section has been one of the chief obstacles in the way of a free interchange of pottahs and kabooliyats, and I can see no valid reason for its retention. The acquisition of a right of occupancy under certain conditions prescribed by the Law is the natural privilege of a ryot, and no contract intended to nullify the law should be permitted.

24.—In the absence of any written specification of the times of payment, the dates on which rent shall become payable are as follow.

On last day of Poos. $\frac{1}{2}$ the rent.
On last day of Cheyt. $\frac{1}{4}$ the rent.
On last day of Assin. $\frac{1}{4}$ the rent.

24. Fixed dates are here substituted for "Established usage" (vide sc: 21 of Act VIII. B. C. of 1869). This change is strongly approved of by Messrs. Dampier and Molony (vide paras: 12 and 13 of their respective Notes).

25.—Ryots at fixed rates are entitled to receive perpetual leases at such rates.

25. Taken with the exception of the word "perpetual" from sc: 25 of the N. W. P. Act.

26.—Occupancy-ryots are entitled to receive pottahs for a term not exceeding ten years at fair and equitable rates. In case of dispute, the rate previously paid by the ryot shall be deemed to be fair and equitable, unless the contrary be shewn in a suit by either party under the provisions of this Act.

26. Taken from sc: 5 of Act VIII. B. C. of 1859, with the exception of the term of ten years.

as the main object of a lease is to remove all uncertainty from
fixed term as to the amount of annual rent-se, and not to
provide for the settlement of questions antecedent or subsequent to
the period of such lease, I do not think that landholders can
fairly object to the latter part of this section - I am confident
that agents generally will not accept patterns which may operate
as death-warrants - L.F.W.

28. If a Agt refused a lease on the ground that it was not such as he was entitled to become by reason of its containing some objectionable special conditions & the landholder in consequence brought a suit to enforce delivery of a Habeas Agt, there is nothing to show how the Court should proceed with reference to the disputed conditions. Sections 2 and 7 of Act VIII. B.C. 1869 are silent as to the nature of the special conditions which may be imported into a lease. It has been assumed by the Civil Courts that s. 7 allows the Zemindar to bar the acquisition of a right of occupancy but I think it may fairly be held that the object of this section was to allow a relaxation of the special restrictions in respect of Rey-ytee lands and the settling of lands by occupancy-ryots rather than to empower the Zemindar to set aside a general provision of the law as to the acquisition of a right of occupancy in Cossimbazar land. Perhaps it would be best to declare that special conditions shall relate only to such matters as are referred to in s. 38 of this Bill. The two provisos in s. 29 of this Bill (text new) constitute in themselves a sufficient reason for not allowing a Ryot's rights to be prejudiced by his acceptance of a short-term lease; and even in these two cases I do not see why a Ryot should be made to suffer because a proprietor chooses to give short leases to a tenkhadar. I think Government in the one case & the proprietor in the other should be made a third party by the Court & should be required to show cause why the term of the lease should not be extended to the limit allowed by s. 25 or 27 of this Bill. C.P.W.

27. When I originally suggested (vide para: 11 of my D. O. letter dated 9th Octr. 1877) that every ryot should be entitled to claim a pottah for five years at the rent hitherto paid by him, I thought more of present than of future requirements. It is obvious, however, that unless this section is carefully worded a ryot may continue to demand successive pottahs for terms of five years at a time without interruption, and that in the end he may acquire a presumed right to hold at fixed rates without the proprietor having any voice in the matter. The provisions suggested in this section will enable the proprietor to protect his own interests.

The proposal regarding five years' pottahs is approved of both by Mr. Dampier and Sir S. Bayley (vide paras: 10 and 14 of their respective Notes).

27.—Common ryots are entitled to receive leases for any term not exceeding five years at the rates hitherto paid by them; provided that no such ryot shall be entitled to receive second and successive leases at the rate hitherto paid by him until twelve months after the expiration of his last lease. If within such period the landholder shall not have ejected such ryot or have obtained an order under this Act for the enhancement of his rent, or if the parties shall not have entered into a new engagement, such ryot shall be entitled to receive another lease for a term not exceeding five years at the rate hitherto paid by him.

If the court in a suit for enhanced rent shall have decreed a higher rate than that previously paid by him, such ryot shall be entitled to receive a lease for a term not exceeding five years at the said higher rate.

28. Taken generally from sc: 10 of Act VIII. B. C. of 1869.

28.—Every landholder who grants a lease is entitled to receive from the person to whom the lease is granted, a kabooliyat or counterpart engagement in conformity with the terms of the lease. The tender to any ryot of a lease, such as the ryot is entitled to receive, shall be held to entitle the landholder to receive a kabooliyat from such ryot.

29. Adapted from sc: 9 of Act. VIII. B. C. of 1869.

29.—If on the trial of a suit for the delivery of a lease instituted by a ryot, the parties do not agree as to the term for which the lease is to be granted, the Court shall, subject to the limits imposed by sections 26 and 27, fix such term as under the circumstances of the case may seem just and proper: Provided that the term shall not, in estates not permanently settled, extend beyond the period for which the proprietor of the Estate has engaged with Government: Provided also, that if the defendant be a farmer or other person having only a temporary interest in the land, the term of the lease shall not extend beyond the period of the continuance of such interest.

(B) REGISTRY OF TRANSFERS.

30. Taken from sc: 26 of Act VIII. B. C. of 1869.

30.—All dependent talookdars and other persons possessing a permanent transferable interest in land, intermediate between the proprietor and the cultivator, are required to register, in the Sherishteh of the Proprietor or superior tenant, to whom the rents of their talooks or tenures are payable, all transfers of such talooks or tenures, or portions of them, by sale, gift, or other-

wise, as well as all successions thereto, and divisions among heirs in cases of inheritance. And every proprietor or superior tenant is required to admit to registry and otherwise give effect to all such transfers when made in good faith, and all such successions and divisions: Provided that no Proprietor or superior tenant shall be required to admit to registry or give effect to any division or distribution of the rent payable on account of any such tenure, nor shall any such division or distribution of rent be valid and binding without the consent in writing of the Proprietor or superior tenant.

31.—All occupancy-ryots are required to register in the Sherishteh of the Proprietor or superior tenant, to whom the rents of their lands are payable, all transfers of their tenures by sale, agreement, or otherwise, which have been made after the commencement of this Act. Every Proprietor or superior tenant is required to admit to registry and otherwise give effect to all transfers of whole tenures when made in good faith. And no ryot claiming a right of occupancy which has accrued *by transfer* after the commencement of this Act shall be entitled to prefer his claim unless the transfer of the tenure has been registered under this section.

31. This section is taken from sc: 13 of the "Bill to provide for the more speedy realization of arrears of rent." In para: 5 of Bengal Secretary's letter to the Government of India No. 503 dated 22nd February 1878 it is remarked that "the Registration will be an acknowledgment by the Zemindar of the validity of the tenure, and if he refuses to register, the law will enforce registration."

32.—Fees at the rate of two per cent. on the annual rent of the interest transferred may be levied by the Proprietor or superior tenant on the registry under this Act of any transfer: provided that no fee shall exceed one hundred rupees.

33.—Every tenant or ryot, whose tenure has been admitted to registry under section 31 or 32, is entitled to receive a copy of the entry under the signature of the Proprietor or superior tenant.

33. This section is new.

(C) RELINQUISHMENT AND EJECTMENT.

34.—Every ryot not holding under a lease, who desires to relinquish the land held by him, shall be at liberty to do so, provided he gives notice of his intention, in writing, to the landholder or his authorised agent in or before the month of Jeyt of the year preceding that in which the relinquishment is to have effect. If he fail to give such notice and the land is not let to any other person, he shall continue liable for the rent of the land for the ensuing year. If the landholder or his agent refuse to receive such notice, or if he receive it but refuse to sign a receipt for the same, the ryot may make an

34. This section corresponds generally to sc: 20 of Act VIII. B. C. of 1869. The words "not holding under a lease" and "for the ensuing year" are new, being taken from sc: 31 of the N. W. P. Act. A Lease, I think, should be treatod here as an ordinary contract, and a ryot relinquishing land without notice, when he does not hold under a lease, should not be made liable for rent for an indefinite period. The words "or if he receive it but" are also taken from the N. W. P. Act.

application on plain paper to the Collector in whose jurisdiction the lands are situate, who shall thereupon cause the notice to be served on such landholder or agent in the manner provided in section 20.

35. Transcribed with the necessary alterations from sc: 21 of Act VIII. B. C. of 1869

35.—Any instalment of rent which is not paid on or before the day when the same is payable according to the lease or engagement, or if there be no written specification of the time of payment, on or before the date fixed by section 24, shall be held to be an arrear of rent, and shall be liable to interest at twelve per cent. per annum.

36. Taken generally from sc: 22 of Act VIII. B. C. of 1869.

36.—When an arrear of rent remains due from any ryot at the the end of the month of Jeyt, such ryot shall be liable to be ejected from the land in respect of which the arrear is due: provided that no ryot at fixed rates or occupancy-ryot, or ryot holding under a lease the term of which has not expired, shall be ejected otherwise than in execution of a decree or order under the provisions of this Act.

37. Taken from sc: 23 of Act VIII. B. C. of 1869.

37.—When an arrear of rent shall be adjudged to be due from any farmer or other lease-holder not having a permanent or transferable interest in the land, the lease of such lease-holder shall be liable to be cancelled, and the lease-holder to be ejected: provided that no such lease shall be cancelled, nor the lease-holder ejected, otherwise than in execution of a decree or order under this Act.

38. Taken from sc: 34 (c) of the N. W. P. Act.

38.—No ejectment of a ryot or forfeiture of a lease shall be decreed on account of any act or omission of the ryot

(1) which is not detrimental to the land in his occupation, or inconsistent with the purpose for which the land was let, or

(2) which by law, custom, or special agreement does not involve the forfeiture of the lease.

39. Taken generally from sc: 35 of the N. W. P. Act. On further consideration I think there is no sufficient necessity for sanctioning the ejectment of ryots at ANY time of the year when decrees are not satisfied promptly (vide para: 5 of my letter dated 9th Octr. 1877). Under such a rule proprietors might take unfair advantage of the failure of a single harvest, and bring suits and eject ryots at a time when they had no means of paying their rents. But by the end of Jeyt a ryot has reaped all three principal harvests of the year, and his omission to pay his rent by that time cannot be attributed to bad luck. Though, strictly speaking, an occupancy-ryot only possesses his right of occupancy SO LONG as he pays his rent he ought not to be placed in a less favorable position than common ryots with respect to liability for ejectment for arrears.

39.—If the landholder desire to eject an occupancy-ryot, or a common-ryot holding under an unexpired lease, against whom a decree has been passed and remains unsatisfied, he may at the end of the month of Jeyt apply to the Court to eject the ryot.

Such Court, on receiving such application, shall (subject to the provisions regarding limitation) cause a notice to be served on the ryot, stating the amount due under the decree, and

informing him that if he does not pay such amount into Court within fifteen days from receipt of the notice, he will be ejected from his land.

If such amount be not so paid, the Court may eject the ryot.

40.—If the landholder desire to eject a common ryot, or any other tenant holding only for a limited period, after the determination of his tenancy, he may cause a written notice of ejectment to be served on such tenant, specifying the land from which the tenant is to be ejected, and informing him that he must vacate such land on or before the last day of the month of Jeyt next following or that if he means to contest the right to eject him he must apply to the Court for that purpose on or before that date.

40. Taken generally from sections 37, 38, 39 and 40 of the N. W. P. Act.

The notice shall be written in the vernacular language and character of the District and shall be issued and served on or before the first day of the month of Cheyt through the office of the Collector, and the landholder shall pay the cost of service. It shall be served in the manner prescribed by section 20.

The tenant, on whom such notice has been served, may, on or before the last day of the month of Jeyt next after the service, make an application to the Court contesting his liability to be ejected.

When such an application is made, the Court shall proceed to determine the question between the parties.

If no such application is made, the tenancy of the land in respect of which the notice has been served shall be held to cease on the last day of the month of Jeyt next after the service. The Court, if necessary, shall enforce the ejectment.

Provided that no such application for the ejectment of a farmer on the determination of a lease shall be received if the lease be of a kind in which an advance has been made by the leaseholder, and the proprietor's or land-holder's right of re-entry at the end of the term is contingent on the repayment of such advance either in money or by the usufruct of the land. In all such cases the land-holder must proceed by suit in the Court.

41.—Wherever rent is taken by the division of the produce in kind or by estimate or

41. This section is taken from section 43 of the N. W. P. Act. It is especially needed in south Behar (vide paras: 22 and 36-39 respectively of Mr. Dampier's and Sir S. Bayley's Notes). The latter remarks that in

40. The existing law (vide Sec: 34 of this Bill) requires a Govt to give notice of his intended relinquishment of land, and it seems only fair to introduce a corresponding provision requiring a landholder to give notice of his intention to quit a Govt. C.J.

41. The proposal which has lately been made in some quarters to defer cases of these kinds to a standing Panchayet in each village seems to me very objectionable. The Panchayet system, in its natural constitution and under a despotic form of government, may answer very well; but maintained side by side with a highly refined code of foreign laws it would prove as unfruitful as any hybrid of the animal world. C.F.W.

as in the case of distraint the Collector should be the Executive er to whom application should be made.

he knowledge that there is an authority to which reference can be e in case of dispute will no doubt tend to discourage unfair dealings ween landholder and ryot, and to check frivolous disputes.

appraisement of the standing crop, or other procedure of a like nature, requiring the presence both of the ryot and land-holder either personally or by agent, If either landholder or ryot, personally or by agent, neglect to attend at the proper time, or if there is a dispute as to the amount or value of the crop,

an application may be presented by either party to the Collector, requesting that a proper officer be deputed to make the division, estimate or appraisement.

On receiving such application the Collector shall issue a written notice to the opposite party or his agent, to attend on the date and at the time specified in the notice, and shall depute an officer before whom such division, estimate, or appraisement shall be made.

If on or before the date appointed, the dispute has not been amicably adjusted, three residents of the village shall be appointed assessors; one by each of the parties, and one by the Officer deputed to divide the grain or estimate or appraise the crops, and the officer deputed shall decide the amount of rent payable by their award, and shall give to the party applying a written authority to divide the grain or cut the crops.

Provided that, if either party fail to attend, the officer deputed shall nominate an assessor on his behalf.

The officer deputed shall report his proceedings to the Collector, who shall determine the amount of costs properly incurred under this section, and the share of the costs to be paid by either party.

(D) MEASUREMENT OF LANDS.

Taken generally from sc: 25 of Act VIII. B. C. of 1869.

42.—Every proprietor of an estate or owner of a tenure, or landholder entitled to receive the whole rents of an estate or tenure, has the right of making a general survey and measurement of the lands comprised in such estate or tenure, or any part thereof, unless restrained from doing so by express engagement with the occupants of the lands.

Taken from sc: 37 of Act VIII. B. C. of 1869.

43.—If any person, intending to measure any land which he has a right to measure, is opposed in making such measurement by the occupant of the land; or if any under-tenant or ryot, having received notice of the intended measurement of land held by him, which is liable to such

measurement, refuses to attend and point out such land, the person claiming the right to measure such land may apply to establish his right to measure such land, in the Court which would have jurisdiction in case such suit had been brought for the recovery of such land, and such Court shall hear and determine the right to make such measurement, and, if the case shall so require, shall make an order enjoining or excusing the attendance of any such under-tenant or ryot. If any under-tenant or ryot, after the issue of an order enjoining his attendance, neglects to attend and to point out the land, it shall not be competent to him to contest the correctness of the measurement made, or any of the proceedings held, in his absence.

44.—If the proprietor of an estate or owner of a tenure, or other person entitled to receive the rents of an estate or tenure, is unable to measure the lands comprised in such estate or tenure, or any part thereof, by reason that he cannot ascertain who are the persons liable to pay rent in respect of the lands, or any part of the lands comprised therein, such proprietor or other person may apply to the Court which would have had jurisdiction in case a suit had been brought for the recovery of such lands, and such Court thereupon, and on the necessary costs being deposited therein by the applicant, shall order such lands to be measured, and shall cause a copy of such order to be transmitted to the Collector in whose jurisdiction the lands are situate, together with the sum so deposited for costs, and the Collector shall thereupon proceed to measure such lands, and shall ascertain and record the names of the persons in occupation of the same, or, on the special application of the proprietor or other person aforesaid, but not otherwise, shall proceed to ascertain, determine, and record the tenures and undertenures, the rates of rent payable in respect of such lands, and the persons by whom respectively the rents are payable. If after due enquiry the Collector shall be unable to cause such lands to be measured, or to ascertain or record the names of the persons in occupation of the same, or if he shall (in any case in which such special application shall have been made as aforesaid) be unable to ascertain who are the persons having teuures or under-tenures in such land, or any part thereof, then and in any such case such Collector may declare the same to have lapsed to the party on whose application such enquiry may have been made. If any person, within fifteen days after such

44. Taken from sc: 38 of Act VIII. B. C. of 1869.

47. The importance of strictly maintaining the standard pole is manifest from Sc: 13 clause 4 of this Bill – the occupancy-right, which acquired his holding at a time when a 16½ cubits' rod was in use, ought not to be liable to enhancement because the Zemindar has since reduced the length of the rod – In one case the Civil Court non-suited my order declaring the length of the Pergunnah pole to be 16½ cubits in a certain measurement-case, and directed that the pole of the particular Estate i.e. a 16½ cubits' pole, should be used

Collector shall have recorded the n
person as being in occupation of s
any part thereof, or shall have decl
to have lapsed, shall appear and shew g
cient cause for his previous non-ap
satisfy such Collector that there
failure of justice, such Collector m
terms or conditions as may seem fi
scind such order according to the j
case.

Taken from sc: 39 of Act VIII. B. C. of 1869.

45.—The Collector shall, as
veniently may be after he shall
completed any such measurement
return a copy thereof to the Cou
such measurement had been order
Court shall receive and record th
every decision of the Collector m
ance of sc: 44 shall be appealable,
had been an order of the Court int
copy had been returned, made up
which such copy was so returned;
aforesaid, every decision of such C
in pursuance of the provisions of s
be final.

Taken from sc: 40 of Act VIII. B. C. of 1869.

46.—The provisions of any Act
the time being in force in Civil Cou
relating to the evidence of witnesses
the attendance of witnesses and th
documents, and to the examination
and punishment of witnesses, shall a
ceedings before any Collector und
and for the purposes aforesaid,
shall have all the powers and auth
by such Acts or any of them conf
Court.

7. The first half of this section is taken from sc: 41 of Act VIII. B. C. 869, the latter half is new—"The Collector" observed L. S. Jackson J. the depository of the standard pole of each pergunnah, and it is exclu- ly within his province to declare what the standard of each pole is" rrucknath Mookerjee, 5 W. R. 17); but this ruling has been set-aside ubsequent decisions of the High Court, and the Civil Court now de- s every such question. If seems to me that the Collector is the t competent to exercise this power.

47.—All measurements made u
shall be made according to the st
the Pergunnah in which the lan
and in case of dispute the Collect
mine what the standard of each p

(E) COMPENSATION FOR IMPROVEMENTS MADE BY RYO

8. Sections 48-51 are taken from sections 44-47 of the N. W. P. Act. The Land Improvement Act 1871" allows the Collector to make advan- to tenants for making improvements, and by the rules framed under said Act the Collector is required to provide for the proper inspection orks constructed with such advances, for the keeping of accounts con- ted therewith &c. Again, the Opium Department is in the habit of ing yearly advances to ryots for the construction of wells, and registers ch advances are regularly kept up. It seems, therefore, quite reason- to make provision for awarding compensation for improvements in the ner proposed, and there can be little doubt that the Revenue author-

48.—If any ryot, or any person
has inherited or purchased, m
improvements on the land in his
are hereinafter mentioned, neith
representative shall be ejected
land without payment of compens
improvements.

Explanation.—The word "improvements" as used in this section means works by which the annual letting value of the land has been, and at the time of demanding compensation continues to be, increased, and comprises,

(*a*) tanks, wells and other works for the storage, supply or distribution of water for agricultural purposes,

(*b*) works for the drainage of land, or for the protection of land from floods, or from erosion or other damage by water,

(*c*) the reclaiming, clearing, or enclosing of lands for agricultural purposes,

(*d*) the renewal or re-construction of any of the foregoing works, or alterations therein, or additions thereto.

49.—Such compensation may, at the option of the landholder or his representative, be made.

1st by payment in money;

2nd by a rent to be charged on the land;

3rd by the grant of a beneficial lease of the land, by the landholder or his representative, to the ryot or his representative;

4th partly by one or by any two of the said ways, and partly by the others or other of the same ways.

50.—In case of difference as to the amount or value of the compensation tendered, either party may apply to the Collector stating the matter in dispute, and requesting a determination thereof.

On receiving such application, the Collector shall

(*a*) cause notice thereof to be served on the other party,

(*b*) take such evidence as the parties or either of them may adduce,

(*c*) make such further inquiry as the Collector may deem necessary, and

ities are best qualified and have most facilities for determining such compensation.

Sc: 48 - It has been ruled that a sub-holding under an indefinite lease, who has not acquired a right of occupancy is entitled to have his improvements considered when an enhanced rent is fixed - (vide case of Muthoora Pershaun Sahoo H.C. 27th July 1864) - C.F.L.

(d) determine the amount of the payment in money, and the amount and incidence of the rent charge, and the terms of the lease or any of such matters.

51.—In determining the amount or value mentioned in section fifty, or the terms of such lease, the Collector shall take into account any assistance given to the ryot by the landholder either directly in money, material or labour, for the purpose of making such improvements, or indirectly by allowing the ryot to hold at a favorable rate of rent.

This clause is new.

The provisions of section 46 shall apply to all proceedings before any Collector under sc: 50.

(F) COMPENSATION FOR WRONGFUL ACTS AND OMISSIONS.

Taken generally from sc: 11 of Act VIII. B. C. of 1869 and sc: [illegible]. W. P. Act. but the amount of compensation has been raised "double" to "five times the amount exacted or paid." It is scarce-[illegible]nable to suppose that a ryot from whom Rs. 2 or Rs. 3 may have [illegible]acted as cesses will bring a suit in the Civil Court in the hope of [illegible]ing Rs. 4 or Rs. 6.

[illegible]atter portion of the second clause of this section is taken from [illegible] "the Bill for the more speedy realization of arrears of rent."

52.—Every ryot, from whom any sum is exacted in excess of the rent specified in his lease, or payable under the provisions of this Act, whether as abwab or under any other pretext; and every ryot, from whom a receipt is withheld for any sum of money paid by him as rent, shall be entitled to recover from the landholder compensation not exceeding five times the amount so exacted or paid.

Receipts for rent shall specify the period or crop on account of which the rent is acknowledged to have been paid, and counterfoils of the same shall be kept in the Cutcherry of the landholder. Such receipts and counterfoils shall bear consecutive numbers, and shall be bound together in books of not less than fifty receipts each.— Neglect or refusal to give such a receipt shall be deemed to be a withholding of a receipt.

[illegible]ken from sc: 13, of Act VIII. B. C. of 1869, and sc: 49 of the [illegible]. Act.

53.—If payment of rent, whether the same be legally due or not, is extorted from any ryot by illegal confinement or other duress, he shall be entitled to recover from the person guilty of such extortion such further compensation, not exceeding the sum of two hundred rupees, as the Court may think reasonable.

An award of compensation under this section shall not bar or affect any penalty or punishment to which the person guilty of such extortion may be subject under the Indian Penal Code.

(G) DEPOSIT OF RENT WITH THE COLLECTOR.

Sections 54-55 are taken, with a few verbal alterations from [illegible]6-47 of Act VIII. B. C. of 1869, as proposed to be amended [illegible] of "the Bill for the more speedy realization of arrears of

54.—If any ryot shall at the Mâl Cutcherry for the receipt of rents or other place where the

rents of the land or other immoveable property held by him are usually payable, tender payment of what he shall consider to be the full amount of rent due from him at the date of the tender to the landholder or his agent; and if the amount so tendered shall not be accepted, and a receipt in full shall not be forthwith granted, it shall be lawful for the ryot, without any suit having been instituted against him, to deposit within ten days from the date of the tender such amount with the Collector to the credit of the landholder; and such deposit shall, so far as the ryot and all persons claiming through or under him are concerned, in all respects operate as, and have the full effect of, a payment then made by the ryot of the amount deposited to such landholdor.

rent." The amendment consists in substituting the agency of the Collector for that of the Civil Court.

55.—Such deposit shall be received by the Collector on the application of the ryot, or his agent, making a declaration in the form, or as nearly as circumstances will admit, in the form set forth in the Schedule (A) hereto annexed, and the Collector shall give a receipt for the same under his seal. If the declaration shall contain any averment which the person making the declaration shall know or believe to be false, or shall not know or believe to be true, such person shall be subject to punishment according to the law for the time being in force for the punishment of giving or fabricating false evidence. Upon receiving the money so deposited, the Collector shall issue a notice to the person to whose credit it has been deposited, in the form set forth in the Schedule (B) hereto annexed; and such notice shall be served by the Collector without the payment of any fee, either upon the person to whom it is addressed, or upon his naib, gomashtah, or other agent; and in the absence of any such agent, it shall be served by sticking up a copy of the same in the Collector's Court, and another copy upon the Mal Cutcherry for the receipt of rents, or other place where the rents are usually paid for the land in respect of which the money has been deposited. If the person to whom such notice is issued, or his duly authorised agent shall appear, and apply that the money in deposit be paid to him, it shall be immediately made over to him.

Chapter III.

Distraint.

56.—The produce of all land in the occupation of a cultivator shall be deemed to be hypothecated for the rent payable in respect of such land; and when an arrear of rent is due from any

56-57. These sections contain the provisions with one or two verbal alterations of the law as set forth in sc: 112 of Act X. 1859, sc: 68 of Act VIII. B. C. of 1869 and sections 56-57 of the N. W. P. Act.

The enactment of Proviso (c) is rendered necessary by sections 78 and 79 of Act VII. B. C. of 1876 which exempt ryots from paying rent to unrecorded proprietors, managers, and mortgagees.

cultivator, the person entitled to receive rent immediately from him may, instead of suing for the arrear as hereinafter provided, recover the same by distraint and sale of the produce of the land in respect of which the arrear is due, under the rules contained in this Chapter.

57.—Provided.

(*a*) that when a cultivator has given security for the payment of his rent, the produce of the land for the rent of which security has been given, shall not be liable to be distrained:

(*b*) that no co-sharer, or sharer in a dependent talook or other tenure in which a division of land has not been made amongst the sharers, shall exercise the power of distraint otherwise than through a manager authorised to collect the rents of the whole estate, revenue-free property, talook or tenure, on behalf of all the co-sharers or sharers in the same.

(*c*) that no proprietor or manager or mortgagee shall exercise the power of distraint unless his name and the extent of his interest shall stand recorded in the Collector's Register under Act VII. B. C. of 1876.

(Vide sc: 113 of Act X. 1859, sc: 69 of Act VIII. B. C. of 1869 and of the N. W. P. Act. The present term of "one year" has been to six months in accordance with the opinion of Sir S. Bayley 9 of his Note.)

58.—Distraint shall not be made for any arrear which has been due for a longer period than six months; nor for the recovery of any sum in excess of the rent payable for the same land in the preceding year, unless the rent has been enhanced under a written engagement for the payment of the excess executed by the cultivator, or by an order under this Act.

(Vide sc: 114 of Act X. 1859, sc: 70 of Act VIII. B. C. of 1869 59 of the N. W. P. Act.

59.—The power to distrain conferred by sections 56 and 57 may be exercised by managers under the Court of Wards, and other persons lawfully entrusted with the charge of landed property;

and also by the agents employed by such persons as aforesaid, in the collection of rent, if expressly authorised by power-of-attorney in that behalf;

Provided that, if any wrongful act is committed by any such agent under color of the exercise of the said power, such agent and his principal shall be jointly and severally liable for any damages accruing by reason of such act.

60.—When any person, empowered to distrain property under section 56, section 57 or section 59, employs a servant or other person to make the distress, he shall give him a written authority (which may be on plain paper) for the same, and the distress shall be made in the name of the person giving such authority.

60. Vide sc: 120 of Act X. 1859, sc: 76 of Act VIII. B. C. of 1869 and sc: 60 of the N. W. P. Act.

61.—Standing crops and other ungathered products of the earth, and crops or other products when reaped or gathered, and deposited in any threshing-floor or place for treading out grain or the like, whether in the field or within a homestead, may be distrained by persons invested with power to distrain under the provisions of this Act. But no such crops or products, other than the produce of the land in respect of which an arrear is due, or of land held under the same engagement, and no grain or other produce after it has been stored by the cultivator, and no other property whatsoever, shall be liable to be distrained under this Act.

61. Vide sc: 115 of Act X. 1859, sc: 71 of Act VIII. B. C. of 1869, and sc: 61 of N. W. P. Act.

62.—Before or at the time when distraint is made under this Act, the distrainer shall cause the defaulter to be served with a written demand for the amount of the arrear, together with an account exhibiting the grounds on which the demand is made. The demand and account shall, if practicable, be served personally on the defaulter; or, if he abscond or conceal himself, so that they cannot be so served, shall be affixed at his usual place of residence.

62. Vide sc: 116 of Act X. 1859, sc: 72 of Act VIII. B. C. of 1869 and sc: 62 of the N. W. P. Act.

The amended sections 72-75, as proposed in Mr. MacDonnell's Draft Bill, though approved by Mr. Dampier and Sir S. Bayley (vide sections 15-16 and 29 of their Notes respectively) do not at all commend themselves to me. Mr. MacDonnell condemns the existing law of distraint as being "unworkable," but I am not aware on what grounds he has formed his judgment. The facts that the Zemindars of Behar prefer a cheap and high-handed mode of procedure to that prescribed by law, and that the ryots owing to their weakness and poverty rarely resist them in the Civil Court, do not prove that the law is unworkable. It seems to me that the cry for amendment in this respect should first come from Lower Bengal or the N. W. Provinces where the ryots will not tolerate illegal distraint, and that if the Zemindars of those Provinces can obtain sufficient assistance from the existing law there is no reason why the Zemindars of Behar should find the law unworkable.

Neither Zemindars nor putwarees, as a body, are fit to exercise the large powers with which Mr. MacDonnell proposes to invest them in the matter of distraint; and if summary jurisdiction in certain cases (as hereinafter proposed) is conferred on the Civil Courts there should be less necessity than ever for resorting to distraint. So far as this District is concerned, neither the number of rent cases nor the number of legal distraint cases, shews that the zemindars have any difficulty in collecting their just rents.

63.—Unless the amount of the demand is immediately paid or tendered, the distrainer may distrain property as aforesaid equal in value, as nearly as may be, to the amount of the arrear and the costs of the distress; and shall prepare a list or description of the said property, and deliver a copy of the same to the owner, or, if he be absent, affix it at his usual place of residence.

Within 24 hours after the service of such

63. The first clause of this section contains the provisions of sc: 117 of Act X: 1859, sc: 73 of Act VIII. B. C. of 1869 and sc: 63 of the N. W. P. Act.

The second clause is new, and is absolutely required if a stop is to be put to illegal distraint.

Intentional omission to furnish the Collector with a copy of the list will of course subject the distrainer to the penalties provided by sc: 176 I. P. C.

copy the distrainer shall be legally bound to furnish the Collector with a copy of the said list or description of property on one-anna stamped paper.

Vide sc: 118 of Act X. 1859, sc: 74 of Act VIII. B. C. of 1869 and of the N. W. P. Act.

64.—Standing crops and other ungathered products may, notwithstanding the distraint, be reaped and gathered by the cultivator, and he may store the same in such granaries or other places as are commonly used by him for the purpose.

If the cultivator neglect to do so, the distrainer shall cause the said crops or products to be reaped or gathered, and in such case shall store the same either in such granaries or other places as aforesaid, or in some other convenient place in the neighbourhood. In either case the distrained property shall be placed in the charge of some person appointed by the distrainer for the purpose. Crops or products which, from their nature, do not admit of being stored, may be sold, before they are reaped or gathered, under the rules hereinafter provided; but in such case, the distraint shall be made at least 20 days before the time when the crops, or products, or any part of the same are fit for reaping or gathering.

Taken from sc: 65 of the N. W. P. Act. It differs from sc: 119 of X. 1859 and sc: 75 of Act VIII. B. C. of 1869 in respect of the auth- to which application may be made. The substitution of the "Collec- for the "Civil Court" is strongly adocated by Mr. Dampier and Sir yley. (Vide paras: 17 and 31 of their Notes respectively.)

65.—If a distrainer is opposed, or apprehends resistance, and desires to obtain the assistance of a public officer, he may apply to the Collector, who may, if he thinks necessary, depute an officer to assist the distrainer in making the distraint.

Vide sc: 121 of Act X. 1859, sc: 77 of Act VIII. B. C. of 1869 c. 66 of the N. W. P. Act.

66.—If at any time after property has been distrained and before the day fixed for putting it up to sale as hereinafter provided, the owner of the property tenders payment of the arrear demanded of him, and of the expenses of the distress, the distrainer shall receive the same, and shall forthwith withdraw the distress.

Vide sc: 122 of Act X. 1859, sc: 78 of Act VIII. B. C. of 1869 c: 67 of the N. W. P. Act. If the Government would adopt my sal to appoint a superior class of Rural Registrars and to make ural Registrar of each thana the Canoongo or supervisor of putwa- n that thanna, no fitter or handier officer for selling distrained pro- could be selected.

67.—Within 5 days from the time of the storing of any distrained crops or products, or if the crops or products do not from their nature admit of being stored, within 5 days from the time of making the distress, the distrainer shall apply for sale of the same to the officer for the time being authorised by the Local Government to sell distrained property within the thanna in which they are situate.

Vide sc: 123 of Act X. 1859, sc: 79 of Act VIII. B. C. of 1869 : 68 of the N. W. P. Act.

68.—The application shall be in writing, and shall contain,

(a) an inventory or description of the property distrained,

(b) the name of the defaulter and his place of residence,

(c) the amount due, and the date of the distress, and

(d) the place in which the distrained property is.

Together with the application, the distrainer shall deliver to the said officer the fee for the service of a notice upon the defaulter as hereinafter provided.

69.—Immediately on receipt of the application, the said officer shall send a copy of it to the Collector;

and shall serve a notice in the Schedule (C) hereto annexed, or to the like effect, on the person whose property has been distrained, requiring him either to pay the amount demanded, or to institute a suit to contest the demand before the Court, within the period of 15 days from the receipt of the notice.

69. Vide sc: 124 of Act X. 1859, sc: 80 of Act VIII. B. C. of 1869 and sc: 69 of the N. W. P. Act.

He shall at the same time send to the Collector, for the purpose of being put up in his office, a proclamation fixing a day for the sale of the distrained property, which shall not be less than 20 days from the date of the application; and shall deliver a copy of the proclamation to the peon charged with the service of the notice, to be put up by him in the place where the distrained property is deposited.

The proclamation shall contain,

(a) a description of the property, and shall specify

(b) the demand for which it is to be sold, and

(c) the place where the sale is to be held.

70.—If a suit is instituted in pursuance of the aforesaid notice, the Court shall transmit to the officer referred to in section 67, or, if so requested, shall deliver to the owner of the distrained property, a certificate of the institution of such suit; and on such certificate being received by, or presented to the said officer, he shall suspend the sale.

70. Vide sc: 125 of Act X. 1859, sc: 81 of Act VIII. B. C. of 1869 and sc: 70 of the N. W. P. Act

71.—A person whose property has been distrained in the manner hereinbefore provided may immediately after the distress, and before the issue of notice of sale, institute a suit to contest the demand of the distrainer.

71. Vide sc: 126 of Act X. 1859, sc: 82 of Act VIII. B. C. of 1869 and sc: 71 of the N. W. P. Act.

When such suit is instituted, the Court shall send immediate information of such institution to the Collector who shall proceed in the manner prescribed in the last preceding section.

If, thereafter, application for the sale of the property is made to the officer referred to in section 67, he shall send a copy of the application to the Collector and suspend further proceedings, pending the decision of the case.

ide sc: 127 of Act X. 1859, sc: 83 Act of XIII. B. C. of 1869, 2 of N. W. P. Act.

72.—The person whose property has been distrained may, at the time of instituting any such suit as aforesaid, or at any subsequent period, execute a bond with a surety, binding himself to pay whatever sum may be adjudged to be due from him, with interest and costs of suit;

and when such bond is executed, the Court shall give to the owner of the property a certificate to that effect, and if so requested, shall direct the Collector to serve the distrainer with notice of the same;

and upon such certificate bring presented to the distrainer by the owner of the property, or served on him by order of the Collector, the property shall be released from distraint.

de sections 128 of Act X. 1859, sc: 85 of Act VIII. B. C. of sc: 73 of N. W. P. Act.

73.—If the institution of a suit to contest the demand of the distrainer has not been certified, in the manner hereinbefore provided, to the said officer, on or before the day fixed in the proclamation of sale, he shall, unless the said demand, with such costs of the distress as are allowed by him, be discharged in full, proceed in manner hereinafter mentioned, to sell the property or such part of it as may be necessary to satisfy the demand with the costs of distress and sale.

de sc: 129 of Act X. 1859, sc: 86 of Act VIII. B. C. of 1869, of the N. W. P. Act.

74.—The sale shall be held at the place where the distrained property is, or at the nearest place of public resort, if the said officer is of opinion that it is likely to sell there to better advantage.

The property shall be sold by public auction, in one or more lots, as the officer holding the sale may think advisable;

and if the demand, with the costs of distress and sale, be satisfied by the sale of a portion of the property, the distress shall be immediately withdrawn with respect to the remainder.

ide sc: 130 of Act X 1859, sc: 87 of Act VIII. B. C. of 1869 of N. W. P. Act.

75.—If, on the property being put up for sale, a fair price (in the estimation of the officer holding the sale) be not offered for it, and if

the owner of the property or some person authorised to act on his behalf apply to have the sale postponed until the next day, or, if a market be held at the place of sale, the next market day, the sale shall be postponed until such day and shall be then completed whatever price may be offered for the property.

76.—The price of every lot shall be paid for in ready money at the time of sale, or as soon thereafter as the officer holding the sale thinks necessary;

and, in default of such payment, the property shall be put up again and sold.

76. Vide sc: 131 of Act X. 1859, sc: 88 of Act VIII. B. C. of 1869 and sc: 76 of the N. W. P. Act.

When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate, describing the property purchased by him and the price paid.

77.—From the proceeds of every sale of distrained property under this Act the officer holding the sale shall make a deduction at the rate of one anna in the rupee on account of the costs of the sale, and shall send the amount so deducted to the Collector in order that it may be credited to Government.

77. Vide sc: 132 of Act X. 1859, sc: 89 of Act VIII. B. C. of 1869 and sc: 77 of the N. W. P. Act.

He shall then pay to the distrainer the expenses incurred by the distrainer on account of the distress, and of the issue of the notice and proclamation of sale prescribed in section 69, to such amount as, after examining the statement of expenses furnished by the distrainer, he thinks proper to allow.

The remainder shall be applied to the discharge of the arrear for which the distress was made, with interest thereon up to the day of sale;

and the surplus (if any) shall be delivered to the person whose property has been sold.

78.—Officers holding sales of property under this Act, and all persons employed by or subordinate to such officers are prohibited from purchasing, either directly or indirectly, any property sold by such officers.

78. Vide sc: 133 of Act X. 1859, sc: 90 of Act VIII. B. C. of 1869 and sc: 78 of the N. W. P. Act.

79.—Officers holding sales under this Chapter are required to bring to the notice of the Collector any material irregularities committed by distrainers under color of this Act;

and if, in any case, on proceeding to hold any such sale, the officer holding it find that the owner of the property distrained has not received

79. Vide sc: 134 of Act X. 1859, sc. 91 of Act VIII. B. C. of 1869 and sc. 79 of the N. W. P. Act.

due notice of the distress and intended sale, he shall postpone the sale and report the case to the Collector, who shall thereupon direct the issue of another notice and proclamation of sale under section 69, or pass such other order as he thinks fit.

Vide sc: 135 of Act X. 1859, sc: 92 of Act VIII. B. C. of 1869 80 of the N. W. P. Act.

80.—When an officer goes to any place for the purpose of holding a sale, and no sale takes place, either for the reason stated in section 79, or because the demand of the distrainer has been previously satisfied, no intimation of such satisfaction having been given by the distrainer to such officer, the charge of one anna in the rupee on account of expenses shall be leviable, and shall be calculated on the estimated value of the distrained property.

If the distrainer's demand be not satisfied until the day fixed for the sale, the charge for expenses shall be paid by the owner of the property, and may be recovered by the sale of such portion thereof as may be necessary.

In every other case it shall be paid by the distrainer, and may be recovered by attachment and sale of his property under the warrant of the Collector.

Provided that in no case shall a larger amount than 10 rupees be recoverable under this section.

Vide sc: 137 of Act X. 1859, sc: 94 of Act VIII. B. C. of 1869 1 of the N. W. P. Act.

81.—When a suit has been instituted to contest the demand of a distrainer, and the distrained property has not been released on security, if the demand or any portion of it is adjudged to be due, the Collector shall issue an order to the officer authorising the sale of such property;

and on the application of the distrainer within 5 days from the receipt of such order by the officer, such officer shall publish a second proclamation in the manner prescribed in section 69, fixing another day for the sale of the distraiued property, which shall not be less than 5 nor more than 10 days from the date of the proclamation;

and unless the amount adjudged to be due with the costs of distress be paid, shall proceed to sell the property in the manner hereinbefore provided.

Vide sc: 138 of Act X. 1859, sc: 94 of Act VIII. B. C. of 1869 82 of the N. W. P. Act.

82.—In all suits instituted to contest the distrainer's demand, the distrainer shall be required to prove the arrear in the same manner as if he had himself brought a suit for the amount under the provisions hereinafter contained.

If the demand or any part thereof is found to be due, the Court shall make a decree for the amount in favor of the distrainer, together with such costs of suit as to such Court may seem proper, and the amount may be recovered by sale of the property, as provided in the last preceding section, if the distress has not been withdrawn;

and, if any balance remain due after such sale, by execution of the decree against the person and any other property of the defaulter,

or, if the property have been released on security, by execution of the decree against the person and property of the defaulter and of his surety.

If the distraint is adjudged to be vexatious or groundless, the Court, besides directing the release of the distrained property, may award such compensation to the plaintiff as the circumstances of the case may require.

83.—If any person claim as his own, property which has been distrained for arrears of rent alleged to be due from any other person, the claimant may institute a suit against the distrainer and such other person, to try the right to the property, in the same manner and under the same conditions as to the time of instituting the suit and to the consequent postponement of sale, as a person whose property has been distrained for an arrear of rent alleged to be due from him, may institute a suit to contest the demand.

83. Vide sc: 139 of Act X. 1859, sc: 96 of Act VIII. B. C. of 1869, and sc: 83 of N. W. P. Act.

When any such suit is instituted, the property may be released upon security being given for the value of the same.

If the claim is dismissed, the Court shall make an order for the sale of the property, or for the recovery of the value thereof, as the case may be, for the benefit of the distrainer.

If the claim is upheld, the Court shall decree the release of the distrained property with costs, and such damages (if any) as the circumstances of the case require.

Provided that no claim to any produce of land liable to distraint under this Act, which at the time of the distress may have been found in the possession of a defaulting cultivator, shall bar the prior claim of the person entitled to the rent of the land, nor shall any attachment in execution of a judgment or decree of any Court prevail against such prior claim.

—If, in any case in which property has distrained for an arrear of rent, and a suit en instituted to contest the demand, the o distrain for such arrear is claimed by or alf of any person other than the distrainer, ground of such other person being actual- in good faith in the receipt and enjoy- f the rent of the land, such other person e made a party to the suit, and the ques- the actual receipt and enjoyment of the y him before and up to the time of the ncement of the suit shall be enquired into, he suit shall be decided according to the of such enquiry.

84. Vide sc: 14 of Act X. 1859, and sc: 84 of the N. W. P. Act. No corresponding section is found in Act Act VIII. B. C. of 1869. The proviso in the two former Acts has been omitted, as the Civil Court in this Act is the authority which would try the suit.

—If any person whose property has been ned for the recovery of a demand not just- , or of a demand due or alleged to be due ome other person, is prevented by any nt cause from bringing a suit to contest mand or to try the right to the property, case may be, within the period allowed tion 71 or 83, and his property is in uence brought to sale, he may, nevertheless, te a suit under this Act to recover dama- the illegal distress and sale of his pro-

85. Vide sc: 141 of Act X. 1859, sc: 97 of Act VIII. B. C. of 1869 and sc: 85 of the N. W. P. Act.

—If any person empowered to distrain ty, or employed for the purpose under a authority by a person so empowered, or sell, or cause to be sold, any property recovery of an arrear of rent alleged to , otherwise than according to the pro- of this Act,

any distrained property is lost, damaged, royed by reason of the distrainer not hav- en proper precautions for the due keeping eservation thereof,

the distraint is not immediately with- when it is required to be withdrawn by ovision of this Act,

owner of the property may institute a der this Act to recover damages for any which he may have thereby sustained.

vided, however, that if any act or omission ned in this section shall have been occa- by a want of due care and attention on rt of the distrainer, such distrainer shall l to have committed "mischief" and shall be t to the penalties provided for that offence; complaint of such offence shall be enter- in the criminal Court without the sanction Collector.

86. Taken, with the exception of the Proviso, from sc: 142 of Act X. 1859, sc: 98 of Act VIII. B. C. 1869 and sc: 86 of the N. W. P. Act. The Proviso in my opinion is strongly needed. The existing law provides heavy punishment for unlawful distraint made by persons "not empowered to distrain," but it affords no remedy except a Civil suit (which is practically no remedy at all) to ryots who have suffered from the wrongful and oppressive acts of persons "empowered to distrain." Moreover, even in a Civil suit the plaintiff can only recover damages for any actual injury he may have sustained. Oppressive landholders are thus directly encouraged to abuse their powers of distraint. By requiring the sanction of the Collector to the institution of a complaint for mischief, the law will protect distrainers from unfounded or vexatious prosecutions. The necessity of the provision is admitted by Sir S. Bayley (vide paras: 30, and 31 of his Note).

87.—If any person not empowered to distrain property under section 56, 57 or 59, nor employed for the purpose under a written authority by a person so empowered, wrongfully distrains or sells or causes to be sold, any property under color of this Act, the owner of the property so distrained or sold may institute a suit under this Act to recover damages from such person for any injury which the plaintiff has sustained from the distraint or sale.

And such person shall be held to have committed "criminal trespass," and shall be subject to the penalties provided for that offence, in addition to any damages which may be awarded against him in such suit.

87. Vide sc: 143 of Act X. 1859, sc: 90 Act of XIII. B. C. of 1869 and sc: 87 of the N. W. P. Act.

In Act VIII. B. C. of 1869 the offender here described is made liable to punishment by fine of Rs. 300, when his act does not amount to criminal trespass, but the other two Acts declare that he "shall be held to have committed criminal trespass." Sir S. Bayley thinks that "it is not desirable to make separate provision for what are already offences under the Penal Code," but my experience leads me to think the contrary in respect of matters of this kind. A Divisional Bench of the High Court actually ruled in a case of this District that the word "intent" in sc: 441 I. P. C. (defining criminal trespass) was used in the narrow and restricted sense of "express purpose," and the difficulty of proving express purpose to injure another when a man is acting solely in his own selfish interests may be easily imagained. Moreover, where the law wishes to punish a person for criminal trespass under circumstances in which there may be room for doubt whether his act technically amounts to criminal trespass or not, it is usual to enact that he shall be held to have committed the offence. E.-G. in sc: 5 of Act No. 1 B. C. of 1866 it is declared that whoever "shall except with the sanction of the Magistrate of the District, keep a Ferry-boat for the purpose of plying for hire within a distance of two miles above or below the place where such public Ferry is established shall be liable to the punishment provided by section 447 of the Indian Penal Code."

88.—Provided that every suit instituted under any of the three last preceding sections shall be commenced within the period allowed by section 100.

88. Vide sc: 144 of Act X. 1859, sc: 100 of Act VIII. B. C. of 1869 and sc: 88 of the N. W. P. Act

89.—If any person resists a distraint of property duly made under this Act he shall be held to have committed "assault" and shall be subject to the penalties provided for that offence.

If any person, forcibly or clandestinely, removes any property legally distrained under this Act he shall be held to have committed "mischief," and shall be subject to the penalties provided for that offence.

No complaint of assault or mischief on account of any act mentioned in this section shall be entertained in the Criminal Court without the sanction of the Collector.

If the offender be not the owner of the property concerned he shall also make good to the distrainer the value of the same.

89. This section is suggested in lieu of the provisions contained in sc: 145 of Act X. 1859, sc: 101 of Act VIII. B. C. of 1869 and sc: 89 of the N. W. P. Act. Under the existing law an offender, as here described, cannot be adequately punished, but if the proposed provisions be made law the Criminal Court will be able both to punish the offender summarily by imprisonment, and also to award compensation to the distrainer under sc: 308 Code of Criminal Procedure.

90.—Notwithstanding anything contained in this Act, all crops or products declared liable to distraint under this Act shall be liable to distraint whether they belong to the person from whom the arrear of rent is due or to any under-tenant of such person, and no such under-tenant shall institute a suit to try the right to the possession of such crops or products, or to recover damages for the distress and sale of the same under this Act; but such under-tenant may

90. This section is taken from sc: 20 of the "Bill for the more speedy realization of arrears of rent.'

deduct the value ofthecrops and products belonging to him which have been so distrained from the rent due from him to such person as aforesaid, or may recover the same by suit from such person.

rom sc: 84 of Act VIII. B C. of 1869.

91.—The estimated value of the claim made in any suit filed under the provisions of sections 69, 71 and 83 shall be deemed to be the amount of arrears of rent for which the distraint shall have been made.

: 136 of Act X. 1859, sc: 93 of Act VIII, B. C. of 1869 e N. W. P. Act.

92.—All proceedings of officers distraining, or assisting distrainers, or holding sales, under this Chapter shall be subject to the revision and orders of the Collector.

Chapter IV.

PROCESS

(of Revenue Courts.)

two sections correspond to sections 146-147 of Act X. ctions 91-92 of the N. W. P. Act.

93.—Every process issued by a Collector under this Act shall be under his seal and signature, and shall be served or executed by the Nazir, or by such other officer as the Collector may direct, at the cost of the party at whose instance it is issued. The amount of such cost, and, in the case of summons to a witness, the sum required for his travelling expenses, shall be deposited in Court before the process is issued. Provided that, if in any case the Collector is satisfied that a party is unable to pay the cost of any necessary process, he may direct such process to be served free of charge.

94.—Any resistance or opposition to the lawful process of a Collector under this Act, may be punished by the Collector according to the provisions of the law for the time being in force for the punishment of resistance or opposition to the processes of the Courts of Civil justice. When, in any such case, the offender is not present, the Collector may summon him to answer to the charge, and if after due service of the summons he fail to attend, may issue a warrant for his apprehension.

Cahpter V.

Jurisdiction of Courts.

section corresponds to sections 33 and 34 of Act VIII. B. C.

95.—Save as in this Act is otherwise provided, all suits brought for any cause af action arising under this Act shall be cognisable by the Civil Courts according to their several jurisdictions—and such suits, and all proceedings therein shall be regulated by the Code of Civil

Procedure, & by such further and other enactments of the Governor General in Council in relation to Civil Procedure as now are, or from time to time may be in force; and all the provisions of the said Code of Civil Procedure and of such other enactments shall apply to such suits.

96.—The cause of action in suits brought for the delivery of any pottah or kabooliyat, or for the cancelment of any lease, for the determination of rates of rent, for illegal exactions of rent, cess, or impost, for refusal of receipts for rent paid, for extortion of rent, for excessive demand of rent, for abatement of rent, for arrears of rent, and for refusing to register transfers, successions or divisions under sections 30 and 31, shall be deemed to have arisen within the jurisdiction of the Court, which would have had jurisdiction to entertain a suit for the recovery of the land, or other immovable property in relation to which the cause of action arose, and shall be brought in such Court and in no other Court.

96. Taken from section 35 of Act VIII. B. C of 1869.

97.—If the land, which by the provisions of the next preceding section determines the place in which the cause of action in the suits in the said section mentioned shall be deemed to have arrisen, be situate within the jurisdiction of different Courts, the provisions of section 19 of the Code of Civil Procedure shall apply to such suits, as if the same had been suits for the recovery of such land.

97. Taken from section 36 of Act VIII B. C of 1869.

98.—All suits brought under any of the provisions of this Act shall be entered in a special register of the Court kept for that purpose.

98. Taken from sc: 42 of Act VIII. B. C. of 1869

99.—All suits which under the provisions of this Act may be brought by or against Proprietors or other persons in the receipt of the rent of the land, may be brought by or against Surbarakars or Tehseeldars of estates held under khass management, whether such estates are the property of Government or of individuals.

99. Taken from sc: 24 of Act VIII. B. C. of 1869.

100.—All suits instituted for the recovery of damages on account of the illegal exaction of rent or of any unauthorised cess or impost, or on account of the refusal of receipts for rent paid, or on account of the extortion of rent by confinement or other duress, or on account of the excessive demand of rent, and all suits for abatement of rent, and all suits to eject any ryot or to cancel any lease on account of the non-payment of arrears of rent, or of the breach of the conditions of any contract by which a ryot may be

100. Taken from sections 27 and 100 of Act VIII. B. C. of 1869.

liable to be ejected, or a lease may be liable to be cancelled, and all suits to recover the occupancy of any land, farm or tenure from which a ryot, farmer, or tenant has been illegally ejected by the person entitled to receive rent for the same, and all suits arising out of the exercise of the power of distraint for arrears of rent conferred on landholders and others, by this or any other Act or out of any acts done under color of the exercise of the said power, shall be commenced within the period of one year from the date of the accruing of the cause of action, and not afterwards;

Provided that any suit which may be instituted under sections 85, 86 or 87 shall be commenced within 3 months from the date of the occurrence of the cause of action.

sc: 28 of Act VIII. B. C. of 1869.

101.—Suits for the delivery of pottahs or kabooliyats, and for the determination of the rates of rent at which such pottahs or kabooliyats are to be delivered, may be instituted at any time during the tenancy, subject, however, to the restrictions contained in section 27.

n from sc: 29 of Act VIII. B. C. of 1869.

102.—Suits for the recovery of arrears of rent shall be instituted within 3 years, from the last day of the month of Jeyt of the year in which the arrear claimed shall have become due: Provided that if the suit be for the recovery of rent at a higher rate than was payable in the previous year, such rent having been enhanced after issue of notice under the provisions hereinbefore enacted; and the enhancement not having been confirmed by any competent Court, the suit shall be instituted within 3 months from the end of the month of Jeyt of the year on account of which such enhanced rent is claimed.

n from sc: 30 of Act VIII. B. C. of 1869.

103.—Suits for the recovery of money in the hands of an agent, or for the delivery of accounts or papers by an agent, may be brought at any time during the agency or within 1 year after the determination of the agency of such agent: Provided that if the person having the right to sue shall, by means of fraud, have been kept from the knowledge of the receipt of any such money by the agent, or if any fraudulent account shall have been rendered by the agent, the suit may be brought within 1 year from the time when the fraud shall have been first known to such person; but no such suit shall in any case be brought at any time exceeding 3 years from the termination of the agency.

104.—Whenever a deposit on account of rent shall have been made under the provisions of this Act, no suit shall be brought against the person making the deposit, or his representatives, on account of any rent which accrued due prior to the date of the deposit, unless such suit be instituted within 6 months from the date of the service of the notice in section 55 of this Act mentioned.

104. Taken from sc: 31 of Act VIII. B. C. of 1869.

105.—Every Naib or Gomashtah hereto specially authorised by any writing under the hand of his employer, shall, for the purposes of all suits for any of the causes of action mentioned in sections 100, 101, or 103 of this Act, be deemed to be the recognised agent of such employer within the meaning of section 37 of the Code of Civil Procedure, though such employer may be within the jurisdiction of the Court in which such Naib or Gomashtah may appear or make any application.

105. Taken from sc: 32 of Act VIII. B. C. of 1869.

Chapter VI.

Procedure in suits up to Judgment.

106.—In any suit hereafter to be brought for the recovery of an arrear of rent, the plaint shall specify the name of the village and estate, and of the Pergunnah or other local division in which the land is situate, the yearly rent of the land, the amount (if any) received on account of the year for which the claim is made, the amount in arrear, and the time in respect of which it is alleged to be due. If the arrear is alleged to be due from any ryot, the plaint shall further specify the quantity of land; and where fields have been numbered in a Government Survey, the number (if it be possible to give it) of such field.

106. The first clause of this section is taken from sc: 48 of Act VIII. B. C. 1869.

The proviso is adopted from the Collector of Durbangah's Draft Bill.—and is approved by Sir S. Bayley (vide para: 10 of his Note).

Provided that no plaint for arrears of rent, or for ejectment on account of non-payment of rent, shall be received, unless it be accompanied by the Zemindaree accounts or other documentary evidence on which it is based; such zemindaree accounts or other documentary evidence being in the form prescribed by the orders of the Local Government at the time in force, and being an thenticated by the registered putwaree.

107.—In every suit for the delivery of pottahs or kabooliyats, and for the determination of the rates of rent at which such pottahs or kabooliyats are to be delivered; in every suit for the recovery of damages on account of the illegal exaction of rent or of any unauthorised cess or impost, or

107.-109. These three sections are based on sections 16 and 17 of the "Agrarian Disputes Act" (VII. B. C. of 1876.) Vide also the Collector of Durbangah's Draft Bill and para: 11 of my letter dated 9th Octr. 1877.

on account of the refusal of receipts for rent paid, or on account of the extortion of rent by confinement or other duress; in every suit on account of the excessive demand of rent, and in every suit for abatement of rent; in every suit for the recovery of arrears of rent; and in every suit for the determination of class of tenure, any number of ryots or other tenants may be sued or may sue collectively; and it shall be no ground for dismissing or refusing to hear the application or plaint that such ryots or other tenants are wrongly joined as defendants or plaintiffs; provided that the suit by or against all the tenants be of the same nature, and be on account of lands situate in the same estate, or, where the estate consists of more than 1 village, in the same village, having 1 registered putwaree.

108.—No order shall be passed in any suit under sc: 107 unless the officer making such order is satisfied that all parties have had an opportunity to appear and make objection to any claims preferred against them;

and if at any time it shall appear to the Court that the question between any two of the parties of whom one is so joined with others cannot conveniently be so jointly tried, the Court may order a separate trial to be held.

109.—Every order passed in any such case as is mentioned in sc: 107 shall specify the extent to which each of the ryots or other tenants named in the order shall be affected thereby.

110.—From and after the commencement of this Act all suits for arrears of rent brought on registered engagements or at rates previously sanctioned by the Court, and within 12 months after such arrears have become due, may, in case the plaintiff shall so desire, be commenced as hereinafter is mentioned, (that is to say) the plaint shall be in the form prescribed by law, but the summons shall be in the Schedule (D) annexed to this Act; and in any case in which the plaint and summons shall be in such forms respectively, it shall not be lawful for the defendant to appear to defend the suit unless he shall obtain leave from a judge as hereinafter mentioned so to appear and defend; and in default of his obtaining such leave or of appearance and defence in pursuance thereof, the plaintiff shall be entitled to a decree for any sum mentioned in the summons, and interest on the same at the rate of 12 per cent per annum to the date of decree together with a sum for costs

These sections have been transcribed from sections 4-11 of for the more speedy realization of arrears of rent," in accord- the views expressed by Sir S. Bayley in para: 40 of his Note. 2 of that Bill I have not reproduced as section 9 Explan II. of t Bill proposes to make a right of occupancy transferable only no decree is outstanding against the Tenant for rent due on f such tenure. When a decree for such rent is not satisfied tain circumstances) within 15 days, it is proposed to make the right resumable by the Zemindar as FORFEIT. Consequently ht will never be sold under the circumstances centemplated in he Bengal Bill. When writing in para: 40, "I have also a strong to the expediency of sc: 12 empowering the decree-holder to t of occupancy in execution," Sir S. Bayley seems to have over- effect of the opinion expressed in his 25th para: as follows. d also adopt Mr. Worsley's subsidiary proposals, making occu- ts transferable by sale so long as there is no outstanding decree d I would make them resumable by the zemindar as FORFEIT is not paid within 15 days of decree."

ds "on registered engagements or at rates previously sanctioned rt" are new, and their substance is generally approved by the thority (vide para: 11 of Mr. Secretary Mackenzie's Note.)

which shall be ascertained in the usual way, and such decree shall be enforced forthwith.

111.—The Court shall, upon application within the period of 14 days from the service of such summons, give leave to appear and to defend the suit upon the defendant paying into Court the sum mentioned in the summons, or upon his satisfying the Court by his examination upon oath or affirmation that he has a defence, or can adduce such facts as the Court may deem sufficient, to support the application, and on such terms as to security, framing and recording of issues or otherwise, as to the Court may seem fit.

112.—After decree the Court may, under special circumstances, set aside the decree, and, if necessary, stay or set aside execution, and may give leave to appear to the summons and to defend the suit if it shall seem reasonable to the Court so to do, and on such terms as to the Court may seem just.

113.—No appeal shall be from any decree of the Court under section 110 unless the judgment-debtor deposit the amount of the decree with costs in such Court to the credit of the person who has obtained the decree.

114.—On the application of the person who has obtained the decree, the money in deposit shall be paid to him; but if the judgment-debtor appeal, and the appeal is decreed in his favor in whole or in part, notice shall be served on the original decree-holder requiring him to pay the money aforesaid, or such portion of it as may be ordered to be refunded, into the public treasury within 14 days from the service on him of such notice.

115.—In default of compliance with such notice the sum referred to therein shall be deemed a demand under Bengal Act VII. of 1868, and shall be recoverable from the decree-holder aforesaid as such.

116.—No suit shall be entertained under section 110 except where it shall be shown to the satisfaction of the Court that rent at the same rate as that alleged to be due has been paid in respect of the holding for which it is claimed for the year immediately preceding the period during which it is claimed, or that the tenant has agreed by a written engagement which is still in force to pay rent at the rate claimed.

Nothing in section 110 shall be deemed to apply to suits for rent at enhanced rates.

aken from sections 44 and 45 of Act VIII. B. C. of 1869 as e Bengal Bill.

117. In any suit hereafter to be brought for rent under the provisions of this Act, if it shall appear to the Court that the defendant has without reasonable or probable cause, neglected or refused to pay the amount due by him, and that he has not, before the institution of the suit, tendered such amount to the plaintiff or his duly authorised agent, or in case of the refusal of the plaintiff or such agent to receive the amount tendered, has not deposited such amount with the Collector before the institution of the suit in the manner mentioned in sections 54 and 55, it shall be lawful for the Court to award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, but exceeding 25 per centum on the amount of rent decreed, as the Court may think fit. These damages, if awarded, as well as the amount of rent and costs decreed in the ruit, shall carry interest at the rate of 12 per centum per annum from the date of decree until payment thereof.

118.—In any suit hereafter to be brought for rent under the provisions of this Act, if it shall appear, to the Court that the plaintiff has instituted the suit against the defendant without reasonable or probable cause, or that the defendant had before the institution of the suit duly deposited with the Collector in the manner mentioned in sections 54 and 55, the full amount which the Court shall find to have been due to the plaintiff at the date of such deposit, it shall be lawful for the Court to award to the defendant, by way of compensation, such sum, not exceeding 25 per centum on the whole amount claimed by the plaintiff as the Court may think fit; and such sum, with interest at the rate of 12 per centum per annum until payment thereof, shall be recoverable from the plaintiff in like manner as sums ordered to be paid by decrees of such Court.

so is new and will be required if sc: 104 becomes law. The volved is distinctly recognised in sc: 209 Code of Criminal

Provided that, for the purposes of this section and section 117, each of the ryots or tenants, who may be joined together in any suit as one party under the provisions of section 104, shall, when so joined with others be deemed to be a single defendant.

n from sc: 48 of Act VIII. B. C. of 1869.

119.—The defendant in any suit instituted under any of the provisions of this Act, may, if

he have duly tendered the same to the plaintiff before the institution of the suit, pay into Court such sum of money as such defendant may consider to be due to the plaintiff, without paying in any costs incurred by the plaintiff up to the time of such payment, and such sum shall be immediately paid out of Court to the plaintiff. If after such payment the plaintiff elects to proceed in the suit and ultimately recovers no further sum than shall have been paid into Court, the plaintiff shall be charged with the whole costs of the suit incurred by the defendant; but if the plaintiff ultimately recovers a further sum than shall have been paid into Court, the defendant shall be charged with the whole costs of the suit.

119. Taken from sc: 48 of Act VIII. B. C. of 1869.

120.—The defendant, in any suit instituted under any of the provisions of this Act, may, without having made any tender before action brought, pay into Court such sum of money as he shall consider to be due to the plaintiff together with the costs (to be fixed by the Court, if necessary, as of a suit originally instituted for the amount so paid into Court) incurred by the plaintiff up to the time of such payment, and such sum shall be immediately paid out of Court to the plaintiff. If after such payment the plaintiff elects to proceed in the suit and ultimately recovers no further sum than shall have been paid into Court, he shall be charged with all costs incurred by the defendant subsequently to such payment; but if the plantiff ultimately recovers a further sum than shall have been paid into Court, the defendant shall be charged with costs as upon a suit originally instituted, for the whole amount for which the plaintiff ultimately obtains a decree, but shall have credit thereout for the amount of costs paid into Court by him in the first instance.

120. Taken from sc: 49 of Act VIII. B. C. of 1869.

121.—No warrant of arrest before judgment shall be issued in a suit for arrears of rent due in respect of a dependent talook or other transferable tenure which may be liable to sale in execution of any decree which may be passed in the case, or in respect of a tenure held under a right of occupancy.

121. Taken from sc: 50 of Act VIII. B. C. of 1869, with an addition respecting a tenure held under a right of occupancy.

122.—It shall be lawful for any person entitled to recover the possession of land under any of the provisions of this Act, to include in his plaint a claim for the mesne profits of the land.

122. Taken from sc: 51 of Act VIII. B. C. of 1869.

123.—Subject to the provisions of sections 39 and 40, any person desiring to eject a ryot or

123. Taken, with the exception of the proviso at the begining, from sc: 52 of Act VIII. B. C. of 1869.
Section 19 of the Bengal Act proposes to make ryots liable to ejectment

r decrees for arrears of rent at any time of the year, but for the ons given in my Notes against section 39 of the present Bill I think an enactment would be unfair towards the ryots.

to cancel a lease on account of non-payment of arrears, may sue for such ejectment or cancelment and for recovery of the arrear in the same action, or may adduce any unexecuted decree for arrears of rent as evidence of the existence of such arrear in a suit for such ejectment or cancelment. In all cases of such suits for the ejectment of a ryot or the cancelment of a lease, the decree shall specify the amount of the arrear, and if such amount together with interest and costs of suit be paid into Court within 15 days from the date of the decree, execution shall be stayed.

Taken generally from sc: 53 of Act VIII. B. C. of 1869.

124.—Whenever in any suit brought by any landholder or other person in receipt of the rent of land, to eject any cultivator not having a right of occupancy, or to eject any farmer or other tenant holding only for a limited period, after the determination of his lease or tenancy, or any agent after the determination of his agency, or to enforce any attachment or ejectment expressly authorised by any Regulation or Act, the Court shall pass a decree in favor of the plaintiff, no application in the form provided in section 235 of the Code of Civil Procedure shall be necessary, but the Court shall forthwith, upon the plaintiff depositing in Court the necessary expenses make an order for delivery of possession in execution of the decree: Provided, however, that no such order shall be made otherwise than in accordance with the provisions of sections 39 and 40.

Taken from sc: 54 of Act VIII. B. C. of 1869.

125.—It shall not be lawful for any Court to entertain any application for stay of execution of any such order pending any appeal, and no person who shall have been evicted under any such order shall be restored to possession so long as the decree under which such order was issued shall remain unreversed.

Chapter VII.

Procedure in execution of decrees in Suits.

Taken from sc: 55 of Act VIII. B. C. of 1869.

126.—When the decree is given for the delivery of a pottah, if the person required by the decree to grant such pottah refuse or delay to grant the same, the Court may grant a pottah in conformity with the terms of the decree under the signature and seal of such Court, and such pottah shall be of the same force and effect as if granted by the person aforesaid.

Taken from sc: 56 of Act VIII. B. C. of 1869.

127.—When a decree is given for the delivery of a kabooliyat, if the person required by the

ee to execute such kabooliyat shall refuse ecute the same, the decree shall be evidence e amount of rent claimable from such person, a copy of the decree under the signature seal of the Court shall be of the same force effect as a kabooliyat executed by the said on.

28.—Process of execution in any suit ins- ed under this Act may be issued against r the person or the property of a judgment- or, but process shall not be issued simulta- sly against both the person and property.

128. Taken from sc: 57 of Act VIII. B. C. of 1869.

29.—No process of execution of any descrip- whatsoever shall be issued on a judgment y suit for any of the causes of action men- d in sections 100, 101, 102 or 103 of this after the lapse of 3 years from the date of judgment, unless the judgment be for a exceeding 500 rupees, in which case the d within which execution may be had shall egulated by the general rules in force in res- to the period allowed for the execution of ees of the Court.

129. Taken from sc: 58 of Act VIII. B C. of 1869.

30.—Whenever a decree may be passed for rrear of rent due in respect of an under-tenure ch by the title deeds or this Act or the custom e country (not inconsistent with any pro- n of this Act) is transferable by sale, and judgment-creditor shall make application for attachment and sale of such under-tenure, Court shall, so soon as such undertenure l have been ordered to be sold, cause to be g up in some conspicuous part of the build- in which such Court sits, and of the offices he Collector and Judge of the District, in which the land comprised in such under- re is situate, and to be affixed on some spicuous place in the town or village in or rest to which such land is situate, a notice for sale of such under-tenure on some fixed date less than 20 days from the hanging up of notice in such Court.

130. Taken from sc: 59 of Act VIII. B. C. of 1869, with a slight modification designed to meet the requirements of the latter part of sc: 7 and Explanation II. of sc: 9 of the present Bill.

31.—Every such notice shall specify in the ds used in the plaint in the suit in which the ree was made, the name of the village, estate pergunnah or other local division in which land comprised in the said under-tenure is ated, the yearly rent payable under the said er-tenure, and the gross amount recoverable er the said decree.

131. Taken from sc: 60 of Act VIII. B. C. of 1869.

Taken from sc: 61 of Act VIII. B. C. of 1869.

132.—No order for the sale of any such under-tenure shall be made in execution of a decree for recovery of arrears of rent payable in respect thereof, when a warrant of execution has been previously issued against the person or moveable property of the judgment-debtor, so long as such warrant remains in force. If, after sale of any such under-tenure in execution of such decree, any portion of the amount decreed remains due, process may be applied for, and issued against, any other property, moveable or immoveable, belonging to the debtor.

133. Taken from sc: 62 of Act VIII. B. C. of 1869.

133.—If the sum due under the decree, together with interest to date of payment, and all costs of process, be paid into Court at any time before the sale commences, whether by the defaulting holder of the under-tenure, or any one on his behalf, or any one interested in the protection of the under-tenure, such sale shall not take place; and the provisions of sc: 13 of Regulation VIII. of 1819 for the recovery of sums paid by person other than the defaulting holder of the under-tenure to stay the sale of the under-tenure, shall be applicable to all similar payments made under this section.

134. Taken from sc: 63 of Act VIII. B. C. of 1869.

134.—If after attachment and before sale of any such under-tenure as aforesaid in execution of a decree for arrears of rent due in respect of such under-tenure, any third party may prefer a claim alleging that such third party and not the person against whom the decree has been obtained is the proprietor of such under-tenure, and was in lawful possession of the same at the time when such decree was obtained, the Court shall not postpone such sale, unless and until such third party shall have deposited in Court the amount of the decree, or given sufficient security for the same. Provided that no transfer of an under-tenure which, by the provisions of this Act or any other law for the time being in force, is required to be registered in the Sherishtah of the Proprietor or superior-tenant, shall be recognised unless it has been so registered, or unless sufficient cause for non-registration be shewn to the satisfaction of the Court.

135. Taken from sc: 64 of Act VIII. B. C. of 1869.

135.—If a decree be given in favor of a tharer in a joint undevided estate, dependant talook, or other similar tenure, for money due to him on account of his share of the rent of an under-tenure situate in such undevided estate, talook, or tenure, no order for the sale of such under-tenure in execution of such decree shall be made unless and until all moveable property (if any)

uch judgment-debtor may possess with-
urisdiction of the Court in which the
instituted, shall have proved insufficient
fy the judgment. In such case, such
nure, if of the nature described in section
y be seized and sold in execution of such
according to the ordinary procedure of
rt, and not in the manner provided in the
tion, and every such sale shall have such
same effect as the sale of any immoveable
sold in execution of a decree not being
ars of rent payable in respect thereof.

—In the execution of any decree for the
t of any money under this Act, not being
due as arrears of rent of a saleable under-
if satisfaction of the judgment cannot be
d by execution against the person or
le property of the debtor within the
in which the suit was instituted, the
nt-creditor may apply for execution
any immoveable property belonging to
btor.

136. Taken from sc: 65 of Act VIII. B. C. of 1869.

—The purchaser of an under-tenure under
visions of sections 130 and 131 of this
all acquire it free of all incumbrances
may have accrued thereon by any act of
der of the said under-tenure, his repres-
s or assignees, unless the right of making
umbrances shall have been expressly
the holder by the written engagement
hich the under-tenure was created, or by
equent written authority of the person
ted it, his representatives or assignees,
l that nothing herein contained shall be
ntitle the person to eject resident-ryots
pancy ryots, nor to cancel bonâ fide
ents made with such ryots by any holder
nder-tenure or his representatives, except
ved in a regular suit to be brought by
rchaser for the adjustment of his rent,
igher rent would have been demandable
me such engagements were contracted
predecessor. Nothing in this section
held to apply to the purchase of a tenure
revious holder thereof, through whose
he tenure was brought to sale.

137. Taken from sc: 66 of Act VIII. B. C. of 1869.

The words "resident ryots or occupancy-ryots" have been substituted for "khoodkast ryots or resident and hereditary cultivators".

—The purchaser of an under-tenure sold
is Act shall apply to the proprietor or
d-holder within 15 days from the day
have his name registered in the pro-
r other land-holder's books as the pur-
nd shall execute a kabooliyat on the
rms and conditions on which the

138. Taken from sc: 67 of Act VIII. B. C. of 1869.

enure was held by the defaulter; and if plication be not made within 15 days, it lawful for the proprietor or other land- o sue the said purchaser for the delivery ooliyat.

Chapter VIII.

Miscellaneous.

—Nothing in this Act contained shall be to confer any power of appeal in any d and decided by a District Judge, ori- or in appeal, if the amount sued for, or ue of the property claimed, does not 100 rupees, in which suit a question of enhance, or vary the rent of a ryot or or any question relating to a title to land me interest in land as between parties conflicting claims thereto, has not been ned by the judgment.

139. Taken from sc: 102 of Act VIII. B. C. of 1869.

—No application for a review of any nt or order passed in any suit brought e provisions of this Act, shall be received Court after the expiration of 30 days e date of such order or judgment, but in this section contained shall be deemed to the High Court of Judicature at illiam in Bengal.

140. Taken from sc: 103 of Act VIII. B. C. of 1869.

—Nothing in this Act contained shall be to confer upon any Court, sitting as a f small causes, cognisance of any suit under the provisions of this Act, of would not have had cognisance if this not been passed.

141. Taken from sc: 104 of Act VIII. B. C. of 1869.

—If in any case the Court is satisfied rty is unable to pay the cost of any y process in any suit under this Act, it ect such process to be served free of

142. Taken from sc: 105 of Act VIII. B. C. of 1869.

—Every order passed by any officer ate to the Collector of a District shall ct to revision and modification by the ; but every order passed by the Collector nder sections 44 and 94 shall be final, open to revision or modification by any Revenue authority,

lanation.—"The Collector" in this means the Chief Officer in charge of ue administration of a District.

143. This section is new. It seems undesirable that in the purely executive matters with which Revenue officers are empowered to deal a system of appeals should be allowed. The delay and expenses involved by such a system would defeat most of the objects of the law. At the same time, I think, the Collector of a District should have power to interfere, when necessary.

—All power at any time heretofore vested dars and other-landholders of compelling ndance of their tenants for the adjust- their rents or for any other purpose drawn; and all such persons are pro- rom adopting any means of compulsion cing payment of the rents due to them, n by suit or distress or otherwise provisions of this Act.

144. Taken from sc: 12 of Act VIII. B. C. of 1869.

Schedule A.

(Referred to in section 55.)

I, A. B., of, &c., do solemnly declare that I did personally (or by my Agent, C. D.), on the day of tender payment to E. F. at his Mâl Cutcherry (or) the place where the rent of the lands at held or vated by me under or from the said E. F. is usually payable, of the sum of Rupees as and for the whole amount due from me in respect of the of the said lands from the month of to the month of inclusive. I further declare that the said E. F. refused to accept the said sum so tendered give me a receipt in full forthwith for the same); and I do declare that, to the best of my , the sum of Rupees so tendered, and which I now desire to it with the Collector, is the full amount which I owe the said E. F. on account of the rent said lands from the month of to the month of inclusive, and that I owe the said E. F. no further sum on account of the rent of the said

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Schedule B.

(Referred to in section 55.)

COURT OF

Dated the *day of* *187*

To E. F. of &c.

reference to the written declaration, you are hereby informed that the sum of Rupees therein mentioned is now in deposit in this Court, and that the above will be paid to you or to your duly authorised agent on application; and take notice that if have any further claim or demand whatsoever to make against the said A. B. in respect of ent of the said lands, you must institute a suit in the Civil Court for the Establishment of claim or demand within 6 calendar months from this date, otherwise your claim will be for barred.

(Copy of declaration in Schedule A to be annexed).

Schedule C.

(Referred to in section 69.)

FORM OF NOTICE TO OWNER OF DISTRAINED PROPERTY.

COURT (OR OFFICE) OF

A. B. DISTRAINER.

(Name, description, and address of the owner of the property).

as the said A. B. has applied to have the distrained property specified below sold for the y of alleged to be due to him as arrears of rent, you eby required either to pay the said sum to the said A. B., or to institute a suit in the ourt of to contest the demand within 15 days from the receipt of this failing which the property will be sold.

Dated this day of 187

Schedule D.

(Referred to in section 110.)

NO. OF SUIT.

IN THE COURT OF AT

Plaintiff

Dependant

hereas (here enter plaintiff's name, description and address) has instituted a suit in this gainst you under Bengal Act 1879 for Rs. ,principal erest due to him as arrears of rent of the lands measuring situate in cultivated by you under or from the said (here enter plaintiff's name) from the month of to the month of both inclusive, at a rental of Rs. per annum, hereby summoned to obtain leave from this Court within 14 days from the service hereof, e of the day of such service, to appear and defend the suit, and within such time to cause arance to be entered for you. In default whereof the plaintiff will be entitled to obtain for any amount not exceeding the sum of Rs. (here state the sum claimed) and of Rs. for costs.

ave to appear may be obtained on its being shown to the satisfaction of the Court that a defence to the suit on the merits, or that it is reasonable that you should be allowed to n the suit.

MEMORANDUM.

ing this Bill has been to bring together in a convenient
and under their proper heads, the most approved suggestions which have been made
amendment of the Rent Law in Behar, and thus to provide some solid basis for discussion
Rent Committee at their meetings. In pursuing this object I have not hesitated to disc
awkward intermixture of subjects displayed in the Bengal Acts, and to adopt the scienti
lucid arrangement of the North-Western-Provinces Rent Act. I have also gladly avail
self of such provisions of this excellent Act as seem well-suited to Behar, and have
ventured to insert several propositions which have suggested themselves to me in the co
my labours.—Much of my work has been mere transcribing of sections, but if we are to h
we want) a complete Rent Act for Behar, such work cannot be omitted by the Committ

Some of the points enumerated in Government letter No. 2122 dated 7th Sept
have treated very briefly. The questions of improving the system of keeping village
and of cheapening Registration are matters which can be better dealt with executively
the Legislature, and sc. 106 of the Bill enables the Government to take action in the
while sc. 78 of the Indian Registration Act 1877 empowers the Government to prescri
alter from time to time, the fees for registration. On these two points, therefore, it see
that an expression of their opinion by the Committee will be sufficient. On all othe
definite provisions will be found in the Bill.

I may say here that, in my opinion, the replacement of Rural Registrars by D
Sub-Deputy Collectors in every thanna jurisdiction would be the very best measure th
be adopted by the Government. Local supervision of putwarees, the sale of distrained p
and the valuation of crops under the Batai or Danabundee system could be most e
carried out by such officers. Nothing is more needed in Behar than the creation of
ments corresponding in some degree to those of Tehsildars in the North-Western-Provi

The provisions regarding occupancy-rights, enhancement of rents, leases for comm
valuation of crops, joinder of plaintiffs or defendants, exercise of distraint, and summar
deserve the most careful consideration.

Mozufferpore,
16th October 1878.

C. F. WORSLEY.

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